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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 924.

WIRT K. WINTON, ADMINISTRATOR OF THE ESTATE OF CHARLES F. WINTON, DECEASED, ET AL., APPELLANTS,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI CHOCTAWS.

No. 925.

J. S. BOUNDS, ATTORNEY-IN-FACT FOR T. A. BOUNDS, APPELLANT,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI CHOCTAWS.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 17, 1917.

No. 926.

JOHN LONDON, APPELLANT,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI CHOCTAWS.

No. 927.

WALTER S. FIELD AND MADISON M. LINDLY, APPELLANTS,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI CHOCTAWS.

No. 928.

J. J. BECKHAM, APPELLANT,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI CHOCTAWS.

No. 929.

WILLIAM N. VERNON, APPELLANT,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI CHOCTAWS.

No. 930.

KATIE A. HOWE, EXECUTRIX OF THE ESTATE OF CHESTER HOWE, DECEASED, APPELLANT,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI CHOCTAWS.

APPEALS FROM THE COURT OF CLAIMS.

INDEX.

1 Court of Claims.

No. 29,821.

The Estate of Charles F. Winton, Deceased, and Others,

vs.

Jack Amos and Others, Known as the "Mississippi Choctaws."

I. *The Petition and Amended Petitions.*

On October 11, 1906, the claimants filed their original petition. Amended petitions were filed by leave of Court on July 20, 1908, and November 23, 1911. The following are copies of the original petition and second amended petition:

2 In the Court of Claims.

The Estate of Charles F. Winton, Deceased, and Others,

vs.

Jack Amos and Others, Known as the "Mississippi Choctaws."

(Filed Oct. 11, 1906.)

To the Honorable, the Chief Justice and Associate Judges of the Court of Claims:

Your petitioners, on behalf of the estate of Chas. F. Winton, deceased, his associates and assigns, respectfully submit:

That on April 26th, 1906, an Act of Congress known as "An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes" (Public No. 129), made the following provision:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit, in such amount or amounts as may appear equitable
3 or justly due therefor, which judgment, if any, shall be paid from any funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the Governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of said Choctaws." (Exhibit 1, p. 352.)

Your petitioners, representing Charles F. Winton, deceased, and his associates and assigns, now submit to this honorable court, for

adjudication their claims for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and pray this honorable court to render judgment thereon on the principle set forth by the statute above quoted, and in order to enable this honorable court to discharge that duty they respectfully submit, in brief, the nature of the services rendered and the expenses incurred in performing the services for the Mississippi Choctaws.

Your petitioners will undertake to establish the fact that they are entitled to the credit of having procured for the Mississippi Choctaws estates worth five thousand dollars each, and that your petitioners have in this service spent ten years of time, without compensation and at great expense in money, and at the risk and hazard of losing every dollar of expense invested in the interest of the Mississippi Choctaws, and that, because of this hazard, your petitioners are entitled to be dealt with on the basis of a contingent fee, since they could only be compensated out of the estates obtained for their clients and because if they had failed the Mississippi
4 Choctaws would not have been able to compensate your petitioners in any way whatever for the services rendered and expenses incurred.

Your petitioners will submit in this cause their contracts with the Mississippi Choctaws, and pray judgment of this honorable court in accordance with the form of these contracts showing what all parties in interest though reasonable and just at the time when the service was undertaken, and will submit, also, the evidence showing that the services were actually rendered in good faith, beginning in 1896 and extending up to 1906. The attention of the Court is called to the further fact that your petitioners must still wait an indeterminate period in which they may recover compensation for the services rendered and expenses incurred.

In the year 1896, Congress passed an Act directing the enrollment of all the Indian people of the Five Civilized Tribes, with a view to ultimate allotment, and your petitioners, believing that the full-blood Choctaws of Mississippi ought to be allowed to participate in the distribution of such estate, both because they were entitled under the Treaty of 1830, Article 14, and because of the further reason that the Mississippi Choctaws had furnished their proportion of the consideration with which the western Choctaws and Chicasaws lands were purchased, determined to assist the Mississippi Choctaws to establish their rights. In accordance with this determination, your petitioners, on behalf of Jack Amos and other Mississippi Choctaws, submitted petitions to the so-called Dawes Com-
5 mission, at Vinita, Indian Territory, in the summer of 1896. These petitions were rejected by said Commission, and the rights of the Mississippi Choctaws to enrollment were denied.

Thereupon an appeal was made by your petitioners on behalf of Jack Amos and other Mississippi Choctaws, to the United States Court, conducted by Hon. William H. H. Clayton, at South McAlester, Indian Territory, and again their rights were denied. A

copy of this decision of Judge Clayton will be found in Exhibit 1, p. 461.

In December, 1896, your petitioners filed a short memorial, in the name of Jack Amos and other Mississippi Choctaws, in the Senate and House of Representatives, a copy of which appears upon Exhibit 1, p. 52. In January, 1897, a second memorial on behalf of the Mississippi Choctaws was filed by your petitioners, a copy of which will be found in Exhibit 1, pp. 54 to 61. After Judge Clayton made his decision adversely to the Mississippi Choctaws, your petitioners appealed therefrom by memorial and petition to the Honorable the Secretary of the Interior, and to the Congress of the United States (Exhibit 1, pp. 62 to 89). On February 11, 1897, your petitioners drew up a resolution, and caused its passage through the Senate of the United States by the kindness of Senator Walthall, of Mississippi, as follows, to-wit:

Resolved, That the Secretary of the Interior be, and he is hereby, directed to transmit to the Senate the following information:

6 1st. A copy of the memorial of the Choctaw Nation of December 24, 1889, relative to the Mississippi Choctaws.

2d. The deposition of Greenwood Leflore, ex-Chief of the Choctaw Nation, of February 24, 1843, before United States Commissioners Claybourne and Graves, relative to the importance of the Fourteenth Article of the Treaty of 1830.

3d. Whether or not the Choctaws entitled to remain in Mississippi by the fourteenth article were reported by United States Commissioners Murray and Vroom to the President of the United States on July 31, 1838, as having been, in a great number of cases, forced to remove from the reservations granted them by the fourteenth article.

4th. Whether or not the Mississippi Choctaws were parties to any subsequent treaty, or have ever executed a relinquishment of their rights to the Choctaw citizenship. (Exhibit 1, p. 91.)

This resolution was argued before the Indian Office by your petitioners, and a favorable report obtained (Exhibit 1, p. 92).

In the meantime your petitioners urged the rights of the Mississippi Choctaws upon the committees in Congress, insisting upon the allowance of their rights, and having drawn and had introduced bills providing for the adjustment of their rights. On March 3, 1897, your petitioners obtained from the Committee on Indian Affairs of the House of Representatives a report favorable to the Mississippi Choctaws whose grandparents were not less than of the half Choctaw blood. (Exhibit 1, p. 90, H. R. Report 3080, 54th Cong., 2d Sess.)

On June 7, 1897, your petitioners caused to be passed by Congress a provision of the Indian appropriation act of that date, as follows:

7 "That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship except an interest in the Choctaw annuities." (Exhibit 1, p. 121.)

Your petitioners with great pains presented to the Dawes Commission elaborate arguments in writing, and by oral arguments, at

Muskogee, Indian Territory, insisting upon the rights of the Mississippi Choctaws, and procured from said Commission a report favorable in part to the claims of the Mississippi Choctaws, as follows, to wit:

"If, in accordance with this conclusion of the Commission, these Mississippi Choctaws have the right at any time to remove to the Indian Territory, and, joining their brethren there, claim participation in all the privileges of a Choctaw citizen, save participation in their annuities, still, if any person presents himself claiming this right, he must be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the fourteenth article of the treaty of 1830. The time for making application to this commission to be enrolled as a Choctaw citizen has expired. It would be necessary, therefore, to extend by law the time for persons claiming this right to make application and be heard by this commission or to create a new tribunal for that purpose." (H. R. Doc., 274, 55th Cong., 2d Sess.; Exhibit 1, p. 143.)

This report was dated January 28, 1898.

On June 28, 1898, the Curtis Act was passed, your petitioners representing before the Committees of the House and Senate,
8 the rights of the Mississippi Choctaws, and procured legislation protecting their interests, as follows: The United States Commission was instructed to identify those Choctaws, and the general act which would have barred all persons who had not theretofore removed to the Choctaw Nation was amended so as to prevent Mississippi Choctaws from being barred by those provisions, in the following language, to wit:

"Said Commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seventh, eighteen hundred and thirty, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior."

* * * * * * *

"No person shall be enrolled who has not heretofore removed to and in good faith settled in the Nation in which he claims citizenship; Provided, however, that nothing in this Act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or treaties with the United States."

(Page 9, Public 162—An Act for the protection of the people of the Indian Territory, and for other purposes. Exhibit 1, p. 154.)

The Act as first proposed would have barred all persons who had not theretofore removed to and in good faith settled in the Nation in which they claimed citizenship. The amendment procured by your petitioners, excepting the Mississippi Choctaws, protected their
9 rights from complete loss by this Act. The value of this service can not be exaggerated.

Your petitioners kept in close touch with the Mississippi Choctaws by personal visits extending over long periods of time and by extensive correspondence and the employment of many men in Mississippi, and, on July 1, 1898, all Mississippi Choctaws, by letter of that date, were instructed as to their duty of proving themselves descendants of fourteenth article claimants, and that they were required to move West. The letter of instructions is as follows:

"NEWKIRK, O. T., July 1, 1898.

"To the Mississippi Choctaws:

"For your information I enclose report No. 3080, H. R., 54th Congress, 2d Session. The Indian Committee of House of Representatives decided favorably to the Mississippi Choctaws, under date of March 3, 1897. This report was obtained for you by active labor, first hunting up the facts, and then getting Senator Walthall to pass a resolution through the Senate to get the information (Sen. Doc. 129, 54th Cong. 2d Sess.), and then soliciting Mr. Allen, of Mississippi, to prepare it. By the help of Mr. Williams and Senator Walthall and Mr. Allen the following item was put in the Indian appropriation act of June 7, 1897:

" 'That the Commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws, under their treaties, are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities.'

"This Commission, January 28, 1898, submitted their report, copy herewith (H. R. Doc. 274, 55th Cong., 2d Sess.), deciding that the Mississippi Choctaw, to avail himself of the 'privileges of a Choctaw citizen,' must prove himself a descendant of a fourteenth article claimant, and in good faith join the Choctaws west with the intent to become one of the citizens of the Nation.

"In bill H. R. 8581 it was provided June, 1898, that——

" 'Said Commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto, and report to the Secretary of the Interior.'

"It provides further that——

" 'No person shall be enrolled who has not heretofore removed to and in good faith settled in the Nation in which he claims citizenship; provided, however, that nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or the treaties with the United States.'

"Not only the Dawes Commission found that the Mississippi Choctaws would have to move to Indian Territory and establish residence in good faith there, but the United States Court, Judge Clayton presiding, July 1, 1897, found that only those Choctaws who had previous to July 1, 1897, settled in good faith in the Choctaw Nation were entitled to citizenship.

"By special authority of an item in the Indian appropriation bill allowing an appeal from this decision, I shall on your behalf make an appeal to the Supreme Court of the United States to test the question of your rights.

"In making up the roll of Mississippi Choctaws it is of the highest importance to furnish proof that each claimant is a descendant of a fourteenth article claimant; for this reason I have secured the list of such claimants, and will make it available to my clients as soon as practicable.

11 "The Dawes Commission will probably take evidence this fall and enroll all who are truly entitled.

"Yours, very respectfully,

"C. F. WINTON,
"Newkirk, O. T."

In February, 1900, your petitioners prepared a petition to Congress on behalf of the Mississippi Choctaws praying the granting of the rights due them, or, in the alternative, the right to be heard in court. (Exhibit 1, p. 80, H. R. Doc. 426, 56th Cong., 1st Sess.)

The attention of the Court is called to the argument submitted by your petitioners in this petition, and also the argument made by your petitioners before the Senate Committee on Indian Affairs, in the matter of Senate Bill 1742, (Exhibit 1, p. 188).

Fortunately for your petitioners, a large number of the petitions filed by them were made public documents, and therefore a permanent and indisputable record was kept of the services performed by your petitioners in the printed archives of the Government itself.

It is impossible to describe the innumerable detail of a service extending through this long period of time, but your petitioners constantly represented the Mississippi Choctaws and their rights before the Department of the Interior, seeking from the Department full justice to the Mississippi Choctaws, while, at the same time, the Department was being solicited and urged by the authorities of the Choctaws and Chickasaw Nations, and by their attorneys, that the rights of the Mississippi Choctaws should not be allowed. To describe

12 these various oral arguments would be to make a useless record that can in no way add to the force of the printed record which is a part of the Government records. It is sufficient to say that wherever oral argument was believed necessary on behalf of the Mississippi Choctaws your petitioners made it, whether in the office of the Commissioner of Indian Affairs, or in the office of the Secretary of the Interior, or before the Assistant Attorney General for the Department of the Interior, or before the Attorney General of the United States, or before the Committees in Congress, or before the United States Commission to the Five Civilized Tribes in the Indian Territory, or elsewhere.

Your petitioners also appeared before the Courts, and before the Supreme Court of the United States, in the Emma Neighbours case, a copy of their brief before the Supreme Court being here submitted. (Exhibit 1, p. 513.)

Numerous bills were introduced looking to an adjustment of the

rights of the Mississippi Choctaws, but it was impossible to obtain the privilege of going into the courts on account of the hostility of the attorneys of the Choctaw and Chickasaw Nations.

In 1899, the Commission to the Five Civilized Tribes, on March 10, prepared a roll containing the names of most of the Mississippi Choctaws, which was approved by the Secretary of the Interior on August 3, 1899, as follows:

"Prima facie, the persons appearing on said schedule, containing the names of the Mississippi Choctaws entitled to enrollment as adopted Indians, would be entitled to such enrollment, subject, however, to the final action of the Department when the final
13 rolls shall be submitted by the Commission for the approval of the Secretary."

(H. R., Doc. 426, 56th Cong., 1st Sess.)

And insisted that they should be required to remove to the Indian Territory in order to enjoy their rights as joint owners of the lands of the Choctaw Nation.

On July 25, 1899, Honorable W. A. Jones, Commissioner of Indian Affairs, with the approval of Honorable Thomas Ryan, Acting Secretary of the Interior, on August 8, 1899, directed the Commission to the Five Civilized Tribes as follows:

"Third: In addition to your report of Mississippi Choctaws identified by you, already submitted, you will, where Mississippi Choctaw Indians or their descendents, may have removed from the State of Mississippi to, and settled within the bounds of the Choctaw and Chickasaw country, before completion of the rolls, and appear before you for identification, and make a record of the facts, upon their testimony, taken before you, and that of other witnesses, when deemed necessary, with a list of their names and the names of their children living with them and born in lawful wedlock, and such description of them as may be necessary for their identification under Act of Congress of June 28, 1898, and report same through this office, together with your decision as to their right of identification as persons coming within the provisions of Article fourteen of the treaty of 1830, between the Choctaws and the United States, for determination by the Department." (Exhibit 1, p. 200.)

Your petitioners made earnest efforts to secure for the Mississippi Choctaws their rights without requiring them to remove from the country in Mississippi.

14 The Choctow Nation insisted in the meantime upon imposing conditions that would bar the Mississippi Choctows from citizenship, employing various attorneys for the purpose of defeating them, being represented by Honorable James S. Standley and Mesrs. Mansfield, McMurray and Cornish. The latter firm made a contract with the Choctow Nation by which they were to receive a fee on a percentage basis for every person who could be defeated in his application for the rights of citizenship.

This action on the part of the Choctow Nation of course made it extremely difficult for your petitioners, who were met at every point by the vigorous opposition of those attorneys, who by ingenious de-

vices sought to prevent legislation in behalf of the Mississippi Choctaws and to prevent them being heard in court, which the Mississippi Choctaws, through your petitioners, constantly sought. The remedy of going into court was never granted to the Mississippi Choctaws, although every effort was made, through many years, by your petitioners on their behalf.

On March 16, 1900, your petitioners, acting through Messrs. Logan, Demond & Harley, and Charles F. Winton, prepared another petition with proper exhibits, earnestly pressing upon Congress the following legislation:

"Provided, That any Mississippi Choctaw duly identified and enrolled as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval
15 of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw Chickasaw country, and on proof of the fact of bona fide settlement they shall be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment."

(Exhibit 1, pp. 202-209, Senate Doc. 263, 56th Congs. 1st Sess.)

This very important petition on behalf of the Mississippi Choctaws was granted by Congress on May 31, 1900, in the following language: (Exhibit 1, p. 227.)

"Provided, That any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allottment."

The attorneys for the Choctaw Nation, who were resisting your petitioners, secured an amendment to this provision, intending to make void the contracts of the Mississippi Choctaws so as to prevent the Mississippi Choctaws being able to procure the services and expense money necessary to protect their interests, by the following provision, which appears in the same immediate connection, to wit:

"Provided further, that all contracts or agreements looking to the sale or incumbrance in any way of the lands to be allotted to said Mississippi Choctaws, shall be null and void." (Exhibit
16 1, p. 227.)

The Mississippi Choctaws, by the terms of the fourteenth article of the treaty of 1830, were made citizens of the United States, and, of course, had a right to contract, as they were not Indians who were wards of the Government of the United States. (Exhibit 1, p. 1.) Nevertheless, attention is called to this legislation obtained by the attorneys for the Choctaw Nation, which had for its purpose depriving the Mississippi Choctaws of the right to use any part of their estates as a conditional fee for the collection of what was due them.

Your petitioners, on behalf of the Mississippi Choctaws, continued their exertions, and insisted upon the right to go into the courts to establish the rights of the Mississippi Choctaws before this honorable United States Court of Claims.

On January 29, 1901, a favorable report was obtained. (Exhibit 1, p. 212, H. R. No. 2522, 56th Cong., 2d Sess.)

This effort by your petitioners to obtain the right to be heard in court failed, however, and subsequent efforts continued to fail on account of the hostility of the attorneys of the Choctaw Nation and the extreme difficulty of procuring the passage of an independent bill through the Congress of the United States, where the opposition is serious and persistent.

After the passage of the above legislation authorizing all Mississippi Choctaws to allotment on proof of bona fide settlement, the Choctaws and Chickasaws negotiated an agreement with the United States Commission to the Five Civilized tribes, and under color of carrying out the act of Congress above quoted inserted in said agreement numerous provisions putting limitations upon the Mis-
17 sippi Choctaws and the rights recognized in them by the act of Congress, as will appear from the following quotation (Exhibit 1, p. 248:)

"13. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said Commission under the provisions of the Act of Congress approved June 28, 1898 (30 Stats. 495), and such full-blooded Choctaw Indians residing in the State of Mississippi, and such full-blooded Choctaw Indians as may have removed from the State of Mississippi to Indian Territory, as may be identified by said Commission, shall alone constitute the "Mississippi Choctaws" entitled to benefit under this agreement.

"14. All "Mississippi Choctaws" as herein defined, who shall remove to and in good faith establish their residence upon the lands of the Choctaw and Chickasaw tribes within six months after the ratification of this agreement shall be enrolled by said Commission upon a separate roll designated "Mississippi Choctaws;" and lands equal in value to lands allotted to citizens of the Choctaw and Chickasaw tribes shall be set apart for each of them. All such persons who reside continuously upon the lands of the Choctaw and Chickasaw tribes for a period of three years after enrollment as above provided, shall, upon proof of such continuous residence, receive patents as provided in the Atoka agreement, and they shall hold the lands thus allotted to them as provided in the Atoka agreement for citizens of the Choctaw and Chickasaw tribes.

"15. If, at the end of three years after such enrollment, any such "Mississippi Choctaw" fails to make proof of continuous bona fide residence upon said lands as above provided, he shall be deemed to have acquired no interest in the lands thus set apart to him,
18 and the said lands shall be sold at public auction for cash under rules and regulations prescribed by the Secretary of

the Interior and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes. Such lands shall not be sold for less than their appraised value according to the appraisement provided for in the Atoka agreement. Upon payment of the full purchase price patent shall issue to the purchaser in accordance with the provisions of the Atoka agreement wherein it provides for patents to allottees."

Here it will be observed that the Interior Department permitted the authorities of the Choctaws and Chickasaws to impose the following limitations upon the Act of Congress previously passed, qualifying and diminishing the rights recognized in the clients of your petitioners, to wit:

They were required to remove and establish residence within six months after the ratification of the agreement of February 7, 1901. They were required to reside continuously upon the lands of the Choctaw and Chickasaw tribes for the period of three years after enrollment as above provided.

They were required at the end of three years to make proof of such removal and continuous residence.

Your petitioners sought in vain to procure an amendment of this agreement for the reason that it would bar a large number of the Mississippi Choctaws.

Many of these people were under labor contracts in Mississippi that made removal within six months impossible, and the Choctaw authorities knew it and intended to raise an artificial barrier. Many of these people were devoted to their Mississippi homes, and
19 it was believed that they would refuse to comply with immediate removal and three years' continuous residence in order to procure their proper rights, and thus another artificial barrier was raised against them.

Many of these people were ignorant and poor, and it was believed for that reason that such persons would not remove within the time, nor make the proof within the time prescribed, and thus another artificial barrier was raised against these people, in the face of the Act of Congress.

Your petitioners sought in vain to prevent this injury to the Mississippi Choctaws, as will appear in Senate Document 319, 57th Congress, 1st Session (Exhibit 1, p. 281).

In this memorial your petitioners vigorously set up the injury and the wrong proposed to be done to the Mississippi Choctaws, and we pray that this memorial be examined by this honorable court as proof of the earnest effort made by your petitioners to protect the rights of the Mississippi Choctaws.

Your petitioners respectfully state that this agreement, unjust to the Mississippi Choctaws, of the 7th day of February, 1901, was defeated by them by preventing its passage at that session of Congress. They were unable, however, to prevent the ultimate passage of substantially the same provisions, which were made even more stringent by the Interior Department, which yielded to the demands of the Choctaw and Chickasaw Nations, as will appear by Sections 41, 42,

43, and 44 of the Act approved July 1, 1902, entitled "An
20 Act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes," as follows (see Exhibit 1, p. 332):

"41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of Section 21 of the Act of Congress approved June 28, 1898 (30 Stats. 495), as Mississippi Choctaws entitled to benefits under article fourteen of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, may, at any time within six months after the date of their identification as Mississippi Choctaws by the said Commission, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such Commission within one year after the date of their identification as Mississippi Choctaws shall be enrolled by such Commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said Commission after six months subsequent to the date of the final ratification of this agreement, and in the disposition of such applications all full-blood Mississippi Choctaw Indians and the descendants of any Mississippi Choctaw Indians whether of full or mixed blood who received a patent to land under the said fourteenth article of the said treaty of eighteen hundred and thirty, who had not moved to and made bona fide settlement within the Choctaw-Chickasaw country prior to June twenty-eighth, eighteen hundred and ninety-eight, shall be deemed to be Mississippi Choctaws entitled to benefits under article fourteen of the said treaty of September twenty-seventh, eighteen hundred and thirty, and to identification as such by said
21 Commission, but this direction or provision shall be deemed to be only a rule of evidence, and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full blood, or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation, all of said Mississippi Choctaws so enrolled by said Commission shall be upon a separate roll.

"42. When any such Mississippi Choctaw shall have in good faith continuously resided upon the lands of the Choctaw and Chickasaw Nations for a period of three years, including his residence thereon before and after such enrollment, he shall, upon due proof of such continuous, bona fide residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment, as provided in the Atoka agreement, and he shall hold the lands allotted to him as provided in this agreement for citizens of the Choctaw and Chickasaw Nations.

"43. Applications for enrollment as Mississippi Choctaws, and applications to have lands set apart to them as such, must be made personally before the Commission to the Five Civilized Tribes.

Fathers may apply for their minor children; and if the father be dead, the mother may apply; husbands may apply for wives. Applications for orphans, insane persons, and persons of unsound mind may be made by duly appointed guardian or curator, and for aged and infirm persons, and prisoners, by agents duly authorized thereunto by power of attorney, in the discretion of said Commission.

"44. If within four years after such enrollment any such Mississippi Choctaw, or his heirs or representatives if he be dead, fails to make proof of such continuous bona fide residence for the period so prescribed, or up to the time of the death of such Mississippi Choctaw, in case of his death after enrollment, he, and his heirs and representatives, if he be dead, shall be deemed to have acquired
22 no interest in the lands set apart to him, and the same shall be sold at public auction for cash, under rules and regulations prescribed by the Secretary of the Interior, and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes, and distributed per capita with other funds of the tribes. Such lands shall not be sold for less than their appraised value. Upon payment of the full purchase price patent shall issue to the purchaser."

It will be seen by this honorable court that the attorneys for the Choctaw Nation were thus able to impose various additional limitations upon the rights recognized in the Act of Congress of May 31, 1900.

For instance—First, they must be duly identified under the provisions of Section 21 of the Act of Congress approved June 28, 1898, as Mississippi Choctaws entitled to benefits under article fourteen of the treaty of 1830, thus limiting the scope of their identification; Second, they were then required, within six months after the date of their identification, to remove from Mississippi to Indian Territory, and make bona fide settlement; Third, they were required to make proof of such settlement within one year after the date of their identification; Fourth, even when these conditions were complied with, they could be barred in various ways, as no Mississippi Choctaw could apply for identification after six months from the date of this act; Fifth, a further limitation was imposed that only full-blood Mississippi Choctaw Indians and the descendants of Mississippi Choctaws who were patentees under the fourteenth article who
had not moved to or made bona fide settlement in the Choc-
23 taw-Chickasaw country prior to June 28, 1898, should be deemed Mississippi Choctaws, and entitled to benefits and to identification.

It was further provided in this agreement, by this latter provision, that—

"this direction or provision shall be deemed to be only a rule of evidence, and shall not be invoked or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full-blood, or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation."

This honorable court will observe the ingenious manner in which

the Mississippi Choctaws were being engineered out of the rights granted to them by the act of Congress obtained by your petitioners.

This agreement obtained by the attorneys of the Choctaw Nation, in section 42, required proof of three years continuous residence.

The further condition was imposed that within four years after such enrollment the Mississippi Choctaw should make proof of such bona fide residence, otherwise he would be barred and the land allotted to him would be taken from him and his children.

From time to time thereafter your petitioners sought to improve the conditions thus imposed upon the Mississippi Choctaws. This effort is illustrated by Document 614, H. R., 58th Congress, 2d Session, Exhibit 1, p. 341, to which the attention of this honorable court is very particularly invited.

24 The antagonism of the attorneys for the Choctaw Nation is exhibited by their enjoining the Dawes Commission from departing in the slightest degree from the conditions which they had ingeniously imposed upon the Mississippi Choctaws. This is set forth in a bill of equity, a copy of which is attached hereto, Exhibit 1, p. 344. It was not until June 21, 1906, that your petitioners, representing the Mississippi Choctaws, secured the final removal of these unjust conditions, which was done in Indian appropriation act approved of that date (Exhibit 1, p. 382), as follows, to wit:

"No distinction shall be made in the enrollment of full-blood Mississippi Choctaws who have been identified by the United States Commission to the Five Civilized Tribes, and who had removed to the Indian Territory prior to March fourth, nineteen hundred and six, and who shall furnish proof thereof." (Public 258, p. 18.)

It will be observed that this latter provision does away with the distinctions in the enrollment of full-blood Mississippi Choctaws who have been identified and who had removed to the Indian Territory prior to March 4, 1906, and who furnished proof thereof. In this manner some of the artificial barriers have been removed, and there are now a large number of Mississippi Choctaws who have been enrolled and have been allotted land.

Your petitioners, knowing that the Mississippi Choctaws were entitled to the rights of citizenship in the Choctaw Nation, and that these rights would not be accorded to them unless they were vigorously asserted and enforced, determined, in 1896, to undertake the protection of the full-blood Mississippi Choctaws or those who

25 might be properly classed as such. With a view to this work, Charles F. Winton went to Mississippi and visited every Choctaw neighborhood, advising the Choctaws of their rights. These rights were based upon the treaty of 1830. The treaty had long since been forgotten. The Mississippi Choctaws were very poor, were very ignorant, and were superstitious and easily influenced by the planters in whose fields they worked. Their labor was valuable to Mississippi, in the cotton fields, in doing heavy work, in fencing, clearing, making roads, etc. Their neighbors advised them against listening to the advice that they should seek their rights in the Indian Territory. It was with great difficulty that the confidence of the Mississippi Choctaws was obtained, and it was impossible to ob-

tain their continuous and intelligent co-operation at all times; yet in the main they did what they could to co-operate in procuring the rights now obtained for them. They made contracts with Charles F. Winton, and later with those associated with said Winton, particularly C. E. Dailey, who was associated with the firm of Logan, Demond & Harley, the contracts being made with him because he was actively engaged in the practice of law and in the service of C. F. Winton. A list of these contracts is respectfully submitted to the court as the basis of the employment of Charles F. Winton, his associates and assigns.

Your petitioners respectfully point out that the actual records of the Government exhibit the fact, beyond the possibility of all doubt, that the Mississippi Choctaws owe their estates to your petitioners and to the labor performed by your petitioners during ten years of patient and unrewarded service.

26

Your petitioners have been at very great expense in conducting this campaign for the Mississippi Choctaws, and in procuring for them these estates, and their contracts are humbly submitted to the Court as evidence that the Mississippi Choctaws did employ your petitioners to perform this labor; that the service was rendered, not to one individual, but to every individual who is enrolled and who has obtained the right to this great estate.

Each one of these individuals will receive 320 acres of average measure of value. It is a low estimate to say that such land is worth fifteen dollars per acre. Each one of these individuals will receive his pro rata part of the Choctaw General Fund, amounting to nearly three millions of dollars, and his pro rata part of the proceeds of the townsites in the Choctaw and Chickasaw Nations, and of the proceeds of the great area of unallotted lands, which amounts to millions of acres, proof of which will be hereafter submitted. The total value of the property involved can safely be placed at twenty-five millions of dollars, and it would be a very conservative estimate to value such estates at five thousand dollars per capita.

Your petitioners humbly submit that on a basis of quantum meruit they should receive a reasonable percentage upon such estates. This percentage should be determined by the contracts, which show what your petitioners and the Mississippi Choctaws agreed to be a fair measure of the value of such services. It should be determined in the light of the refusal of the Dawes Commission, in 1896, to enroll them; in the light of Judge Clayton's adverse decision rendered in 1896, and in the continued hostility, throughout ten years, of the Choctaw authorities to allow their allotment. It should be determined in the light of the long time necessary to procure a successful issue; in the light of the expenses involved; in the light of the personal sacrifice required in carrying on a contest for clients who were too poor to contribute a single dollar to sustain it.

27

Charles F. Winton, due to his exposure in Mississippi, lost his life, and died in poverty.

In view of the fact that each Mississippi Choctaw family has been placed in a condition of comparative affluence, so that every person now is possessed of property easily worth five thousand dollars, your

petitioners humbly submit their claims for compensation to the considerate judgment of this honorable court.

Respectfully submitted.

CHARLES F. WINTON,
By WIRT K. WINTON,
ROBERT L. OWEN, AND OTHERS.

ROBERT L. OWEN, *Attorney.*
JAMES K. JONES, *of Counsel.*

28 WESTERN JUDICIAL DISTRICT,
Indian Territory:

Before me, the undersigned, a Notary Public in and for the district aforesaid, personally appeared Robert L. Owen, one of the petitioners above named, and, having been duly sworn, on his oath says: That he is acquainted with the matters and things set forth in the above and foregoing petition; that he has carefully read the same, and that he knows of the services rendered by Chas. F. Winton, deceased, his associates, and assigns, and that the claim for compensation is justly made, and that the prayer of the petitioners should be allowed.

That the affiant knows the contents of the foregoing petition, that all the matters and things therein set forth are matters known to the affiant of his own knowledge to be true in substance and in fact, and that all the matters therein set forth as upon information he confidently believes to be true.

ROBT. L. OWEN.

Subscribed and sworn to before me this 29th day of September, 1906.

[SEAL] CHAS. MERCER, *Notary Public.*

My commission expires November 19, 1907.

28½ WESTERN JUDICIAL DISTRICT,
Indian Territory:

At the same time and place personally appeared Wirt K. Winton, who, having been duly sworn, on oath says: That he is the eldest son of Chas. F. Winton, deceased, and acts on behalf of Mrs. Chas. F. Winton and Lula Winton, the daughter of Chas. F. Winton, they being the only three adult heirs of said Chas. F. Winton, deceased; that he has duly read the above petition, and that the same is true upon his information and belief. That the interests of the said Chas. F. Winton, by request of the adult heirs aforesaid, are now represented by Robert L. Owen. That the claimants in the above entitled matter, as therein set forth, are justly entitled to the relief sought. That no compensation has been made to them for the services rendered and expenses incurred.

WIRT K. WINTON.

Subscribed and sworn to before me this 29th day of September, 1906.

[SEAL] CHAS. MERCER, *Notary Public.*

My commission expires November 19, 1907.

29 In the Court of Claims.

The ESTATE OF CHARLES F. WINTON, Deceased, and Others, His Associates,

vs.

JACK AMOS and Others, Known as the Mississippi Choctaws.

Second Amended Petition.

(Filed Nov. 23, 1911.)

To the Honorable, the Chief Justice, and Associate Judges of the Court of Claims:

Your petitioner, Wirt K. Winton, the administrator of the estate of Charles F. Winton, deceased, heretofore, by due and proper orders having been substituted as the nominal claimant herein, comes now on behalf of the estate of Charles F. Winton, deceased, and also on behalf of the associates and assigns of the said Charles F. Winton, deceased, and come also James K. Jones, administrator of the estate of James K. Jones, deceased, and Robert L. Owen in his own behalf, alone, and by leave of the court first had and obtained present this second amended petition, and aver and charge—

30 I.

That by an Act of Congress of April 26, 1906, entitled: "An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," (34 Stat. L. 140), it is provided:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit, in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from any funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the Governor of the Choctaw Nation, and the Attorney-General shall appear and defend the said suit on behalf of said Choctaws."

II.

2. The associates of the said Charles F. Winton, deceased, are as follows:

Robert L. Owen, now resident in Muskogee County, Oklahoma;

31 James K. Jones, deceased since the filing of the original petition, whose administrator, James K. Jones, is resident within the District of Columbia;

Walter S. Logan, deceased since the filing of the original petition, whose estate is being administered in the City and County of New York, of which the said Logan, deceased, was a resident;

Preston C. West, of Muskogee County, Oklahoma; Frank B. Crosthwaite, resident in the District of Columbia;

John Boyd, also resident in the District of Columbia; for all of whom the said Wirt K. Winton appears; except that the said Robert L. Owen appears in his own behalf alone, and the said James K. Jones also appears as the administrator of the estate of James K. Jones, deceased.

III.

Your petitioners charge that about the year 1896, the said Charles F. Winton, deceased, for and in behalf of himself and Robert L. Owen, who was then his sole associate, entered into a certain agreement, or contract, with a very large number of the Mississippi Choctaws, being Indians of the Choctaw blood, who had not removed to the West with the main body of the Tribe, but who, being substantially full-bloods, continued, after the departure of the Tribe to the West, to reside in the State of Mississippi, under and by the terms of which the said Winton, Owen and their

32 associates were to render services to the entire body of the Mississippi Choctaws in securing for them rights which they claimed within the Choctaw and Chickasaw Nation in the then Indian Territory.

At the time of the making of the contracts by Charles F. Winton with the Mississippi Choctaws in 1896, the Mississippi Choctaws were extremely poor, working at manual labor, making fences, picking cotton, chopping wood, and having no landed estate or personal property worth mentioning. Their children could not attend schools provided for the whites; they were subject to a species of vassalage, not permitted to leave their employers' service while under indebtedness, which operated as a kind of peonage; were not allowed to vote or to exercise the rights accorded the citizens of Mississippi, and were otherwise in a state of helplessness, both financially and socially.

The Choctaw Nation West had previously to 1890, desired all Choctaws brought from East of the River to the Choctaw Country West, for the purpose of making the Choctaw Nation a larger and more important community, but when it became evident by the laws passed in 1893, that the United States had determined to destroy the Choctaw Nation as a government, and distribute the property,

there arose strong opposition to the admission of any more persons,
because their admission would diminish the per capita share
33 of those who were living in the West. It was on this account
the Choctaws and Chickasaws vigorously opposed the admission to membership of the Mississippi Choctaws through their officials and attorneys and by solicitation and argument before the authorities of the United States.

In consequence of the services rendered by Winton and his associates their present status is entirely changed—the Mississippi Choctaws enrolled on the final roll, approved March 3, 1907, owning property of the value of not less than ten millions of dollars; their social status is entirely changed—they are freely admitted to white schools, and given the social status of white men in the State of Oklahoma. Each family of five persons may be fairly estimated to be worth between thirty and fifty thousand dollars, and this estate was obtained directly by the services of Charles F. Winton and his associates.

The original contract contemplated not only obtaining the estate for the Mississippi Choctaws, but contemplated their removal and the establishment upon their allotments in the Choctaw and Chickasaw Country.

The compensation provided in these contracts was 50% of the lands or moneys ultimately to be recovered. The subsequent hostility of the United States officials and the Choctaw Nation made it impossible to carry out the contracts in their entirety in the
34 matter of removing and establishing the Mississippi Choctaws; so that petitioners were only able to secure the estate in the manner hereinafter recited, but were not able to finance the removal of individuals, or the location of individual Indians upon their homesteads, as originally contemplated; and for that reason the jurisdictional act was sought by the said Winton and his associates, solely to cover compensation for their claim for services rendered to the Mississippi Choctaws as a body, in securing the legislation and the executive action, which resulted in the ultimate establishment of the Mississippi Choctaws in the Choctaw and Chickasaw Nations.

Until the hostility of the United States authorities to the removal of the Mississippi Choctaws demonstrated in 1903 that the removal of the Mississippi Choctaws by private individuals could not be effected, the said Winton and his associates were engaged in such effort, and did, in fact, remove a considerable number of Mississippi Choctaws to the Indian Territory at large expense to themselves; but in view of the jurisdictional act and of the inability of the said Winton and his associates to continue services of that character, no claim is made on account of the expenses so incurred and paid by the petitioners, or for services rendered in that connection, but this claim is limited to compensation for services in the actual securing of the estate.

35 IV.

4. The first important service rendered was the presentation of the claim of the Mississippi Choctaws at Vinita in 1896, in the name of Jack Amos and ninety-seven others to the Dawes Commission, and evidence in support of their claims and arguments based upon the Fourteenth Article of the Treaty of 1830. This was done in person by your petitioner, Robert L. Owen, with the assistance of Charles F. Winton.

In December, 1896, the Dawes Commission, without assigning reasons denied the claim of Jack Amos and the other full-blood Mississippi Choctaws.

Immediately upon this adverse decision Winton and his associates presented to the Senate and House of Representatives, a memorial of the Mississippi Choctaws in December, 1896, as claimants under the Fourteenth Article of the Treaty of 1830. (See Exhibit 1, copies of which duly served upon the officials of the Interior Department, R. L. O. Deposition heretofore filed, page 52.)

A second printed memorial was filed in Congress in January, 1897, setting up the rights of the full-blood Mississippi Choctaws under the Fourteenth Article of the Treaty of 1830, and presented to the Senate and House of Representatives and to the officials of the Government having charge of this matter. (See R. L. O. Exhibit 1, pages 54 to 61.)

36 On September 1, 1897, a further printed memorial was submitted to the Honorable Secretary of the Interior (of twenty-two printed pages), setting up the rights of the full-blood Mississippi Choctaws under the Fourteenth Article of the Treaty of 1830. A number of copies of this memorial were distributed among the officials of the Government for the purpose of emphasizing the legal rights of these people. (See pages 62 to 89, R. L. O., Exhibit 1.)

On February 11, 1897, the Senate of the United States passed a resolution drawn by Charles F. Winton and his associates, calling upon the Interior Department for a report upon the rights of the Mississippi Choctaws.

(See page 91, R. L. O., Exhibit 1.)

On February 15 a report was made by Thomas B. Smith, Acting Commissioner of Indian Affairs, and transmitted to Congress in answer to this resolution, in the Senate, showing the rights of the full-blood Mississippi Choctaws under the Fourteenth Article of the Treaty of 1830 (see R. L. O., Exhibit 1, page 92). This report was based upon the argument submitted by Winton and his associates, and evidence offered by them.

On March 3, 1897, Winton and his associates secured a favorable report from the Committee on Indian Affairs in the House of Representatives in favor of the Mississippi Choctaws.

37 (H. R. Report 3080—54th Congress, 2d Session. R. L. O., Exhibit 1, pages 90 to 97.)

On June 7, 1897, Congress re-enacted the Indian Appropriation

Bill, which had not been approved by President Cleveland, including the following item, to wit:

"That the Commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws, under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities."

(R. L. O., Exhibit 1, page 121.)

This item had been obtained at the request and upon the arguments presented by Winton and his associates during the preceding Session, and as a compromise for a more radical item sought through Senator Walthall. (See Cong. Rec., February 26, 1907, pp. 23 to 37.)

Winton and his associates appealed the case of Jack Amos and others against the Choctaw Nation to the United States Court for the Indian Territory, Judge William H. H. Clayton presiding, who rendered his opinion in this case adverse to the Mississippi Choctaws, affirming the action of the Dawes Commission (see R. L. O., Exhibit 1, pages 460 to 467). This case was appealed by Winton and his associates to the Supreme Court of the United States, which
38 sustained the opinion of Judge Clayton in the case of Stephens vs. Cherokee Nation et al., May 15, 1899. (R. L. O., Exhibit 1, pages 481, 499.)

The brief submitted by Logan and Hutchins on behalf of Winton and his associates, in the Supreme Court of the United States, was presented in the companion case of Emma Nabors, et al. (See R. L. O., Exhibit 1, pages 515 to 541.)

In the meantime your petitioners, Winton and his associates, appeared before the Dawes Commission and submitted arguments and obtained from them a report, which was favorable to the Mississippi Choctaws, and it was submitted to the Congress of the United States on February 2, 1898. (H. R. Doc. 274—55th Congress, 2d Session; R. L. O., Exhibit 1, page 138.)

This report declared that the Mississippi Choctaws had the right to remove to the Choctaw Country, but should be identified under the Fourteenth Article of the Treaty of 1830. Your petitioners immediately took steps to procure this identification—appealed to the Senators and Representatives of Mississippi, especially to Senator Walthall, and Representatives John Allen, John S. Williams and H. D. Money, and they procured the following provision in the Curtis Act of June 28, 1898, for the identification of the Mississippi Choctaws:

"Said Commission shall have authority to determine the
39 identity of Choctaw Indians claiming rights in the Choctaw lands under Article Fourteen of the Treaty between the United States and the Choctaw Nation, concluded September 27, 1830, and to that end they may administer oaths, examine witnesses and perform all other acts necessary thereto, and make report to the Secretary of the Interior." (R. L. O., Exhibit 1, page 154.)

The Curtis Act, as originally drawn contained the following provisions:

"No person shall be enrolled who has not heretofore removed to, and, in good faith, settled in the Nation in which he claims citizenship."

(R. L. O., Exhibit 1, page 154.)

This provision would have operated as a complete bar to any claims of the Mississippi Choctaws to either lands or funds of the Choctaw Nation. It became of the greatest importance to provide an exception for the Mississippi Choctaws, and your petitioners drafted and obtained the passage of the following item, to wit:

"Provided, however, that nothing contained in this Act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of, or the treaties with, the United States."

(R. L. O., Exhibit 1, page 154.)

40 Immediately upon the passage of this Act Charles F. Winton sent a circular letter to the Mississippi Choctaws (sending out a very great number of copies), that they might be fully informed of what had been done, as follows, to wit:

"NEWKIRK, O. T., July 1, 1898.

"To the Mississippi Choctaws:

"For your information I enclose report No. 3080, H. R., 54th Congress, 2d Session. The Indian Committee of House of Representatives decided favorably to the Mississippi Choctaws, under date of March 3, 1897. This report was obtained for you by active labor, first hunting up the facts, and then getting Senator Walthall to pass a resolution through the Senate to get the information (Sen. Doc. 129, 54th Congress, 2d Session), and then soliciting Mr. Allen, of Mississippi, to prepare it. By the help of Mr. Williams and Senator Walthall and Mr. Allen the following item was put in the Indian appropriation act of June 7, 1897:

" 'That the Commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws, under their treaties, are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities.'

"This Commission, January 28, 1898, submitted their report, copy herewith (H. R. Doc. 274, 55th Cong., 2d Sess.), deciding that the Mississippi Choctaw, to avail himself of the 'privileges of
41 a Choctaw citizen,' must prove himself of a descendant of a Fourteenth Article Claimant, and in good faith join the Choctaws west with the intent to become one of the citizens of the Nation.

"In bill H. R. 8581 it was provided June, 1898, that—

" 'Said Commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choc-

taw Nation, concluded September 27, 1830, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto, and report to the Secretary of the Interior."

"It provides further that—

" 'No person shall be enrolled who has not heretofore removed to and in good faith settled in the Nation, in which he claims citizenship; provided, however, that nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or the treaties with the United States.'

"Not only the Dawes Commission found that the Mississippi Choctaws would have to move to Indian Territory and establish residence in good faith there, but the United States Court, Judge Clayton presiding, July 1, 1897, found that only those Choctaws who had previous to July 1, 1897, settled in good faith in the Choctaw
42 Nation were entitled to citizenship.

"By special authority of an item in the Indian appropriation bill allowing an appeal from this decision, I shall on your behalf make an appeal to the Supreme Court of the United States to test the question of your rights.

"In making up the roll of Mississippi Choctaws it is of the highest importance to furnish proof that each claimant is a descendant of a fourteenth article claimant; for this reason I have secured the list of such claimants, and will make it available to my clients as soon as practicable.

"The Dawes Commission will probably take evidence this fall and enroll all who are truly entitled.

"Yours very respectfully,

"C. F. WINTON,
"Newkirk, O. T."

Thereupon your petitioners furnished to the Dawes Commission to enable them to perform the duty of identification, an alphabetical index of sixteen thousand Choctaw names, after each name being from one to a dozen references to the page upon which the record of that individual could be found in the case of the Choctaw Nation against the United States, which contained a record of about seventeen hundred pages and referring to other records.

Your petitioners appeared in person before the Dawes Commission in Mississippi, sending runners all over Mississippi, at
43 their own expense, to bring the Mississippi Choctaws before the Dawes Commission, and assisted that Commission in every way possible to ascertain the truth.

On March 10, 1899, a roll of Mississippi Choctaws was submitted by the Dawes Commission, containing 1,922 names of identified Fourteen Article claimants (see R. L. O., Exhibit 1, page 509.) This report was approved by the Secretary of the Interior on August 3, 1899, in a letter containing the following words:

"Prima facie, the persons appearing on said schedules, containing the names of the Mississippi Choctaws, entitled to enrollment as adopted Indians, would be entitled to such enrollment, subject,

however, to the final action of the Department when the final rolls shall be submitted by the Commission for the approval of the Secretary."

(H. R. Doc. 426—56th Congress, 1st Session. R. L. O., Exhibit 1, page 186.)

Over the resolute protest of your petitioners the Choctaw authorities persuaded the Interior Department to disapprove this entire roll on March 3, 1907, thus depriving a large number of these people of their rights.

On February 7, 1900, your petitioners, on behalf of the Mississippi Choctaws, drew up a memorial and petition to the Senate and House of Representatives, which was presented by Mr. Wil-
44 liams, of Mississippi, praying the right of the Mississippi Choctaws to be heard in Court, and the bill for this purpose was passed through the House of Representatives, giving the Mississippi Choctaws the right to appear in Court, but the said bill failed to pass the Senate.

Your petitioners secured the passage of a bill through the Senate, giving the Mississippi Choctaws the right to appeal to the Courts for the determination of the rights as members of the Choctaw Nation, but that bill failed to pass the House, because of the hostility of the Choctaw authorities and the activity of their attorneys.

The Dawes Commission was instructed to continue the work of identification of the Mississippi Choctaws under letter of July 25, 1899. (R. L. O., Exhibit 1, page 200.)

Your petitioners, thereupon, on April 4, 1900, submitted a memorial to the Senate and House of Representatives, which was presented in the Senate by Senator Stewart, Chairman of the Committee on Indian Affairs (Senate Document 263, 56th Congress, 1st Session—R. L. O., Exhibit 1, page 202).

In this memorial your petitioners requested the following enactment:

"Provided, that any Mississippi Choctaw duly identified and enrolled as such by the United States Commission to the Five Civilized Tribes shall have the right at any time prior to the approval
45 of the final rolls of the Choctaw and Chickasaw by the Secretary of the Interior, to make settlement within the Choctaw and Chickasaw Country, and on proof of the fact of bona fide settlement they shall be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment."

(R. L. O., Exhibit 1, page 202.)

This request was supported by argument and evidence, and was enacted into law substantially on May 31, 1900, in the following language, to wit:

"Provided, that any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to

make settlement within the Choctaw and Chickasaw Country, and on proof of the fact of bona fide settlement, may be enrolled by the said United States Commission, and by the Secretary of the Interior as Choctaws entitled to allotment."

(R. L. O., Exhibit 1, page 227.)

The attorneys of the Choctaw Nation procured, however, an amendment to this provision, as follows, to wit:

"Provided, further, that all contracts or agreements, looking
46 to the sale or encumbrance, in any way, of the lands to be allotted to said Mississippi Choctaws, shall be null and void."

(R. L. O., Exhibit 1, page 227.)

This provision was intended to weaken the Mississippi Choctaws in the matter of their representation and was intended to discourage your petitioners and prevent them from continuing to render services to the Mississippi Choctaws. Your petitioners, nevertheless, persisted in the service of their clients until the completion of the final rolls, March 3, 1907.

On January 29, 1901, your petitioners obtained a favorable report upon H. R. 4158 (H. R. Report 2522, 56th Congress, 2d Session—R. L. O., Exhibit 1, page 212), recommending the passage of the bill, the object of which was to enable the Mississippi Choctaws to assert in the Court of Claims their rights under the Fourteenth Article of the Treaty of 1830. This bill passed the House, but failed to pass the Senate.

Your petitioners on all occasions, before the Committees of Congress, before the Interior Department, before the Indian Office, before the Attorney-General, before the Dawes Commission and before the Courts, did everything in their power to protect the Mississippi Choctaws at petitioners' expense, expending approximately forty thousand dollars during the ten years of their service, for which they have received no return; their compensation not only being
47 contingent upon success, but the danger of failure to recover for their clients, and the danger of recovering their fees, even after their clients' recovery, being extremely hazardous.

On February 7, 1901, the Dawes Commission and the Choctaw and Chickasaw Commissioners signed an agreement to be submitted to Congress February 23, 1901. (H. R. Document 490—56th Congress, 2d Session.—R. L. O., Exhibit 1, pages 244 to 259.)

By Sections 13, 14 and 15 it was provided in the first draft agreed to by the Choctaw and Chickasaw Commissioners, that the Mississippi Choctaws' schedule of March 10, 1899, should be approved and the persons thereon recognized for enrollment and allotment; but in the Interior Department the hostility of that Department to the Mississippi Choctaws was exhibited by the fact that it caused Section 13 to be redrafted in such a way as to leave out the ratification of this schedule of March 10, 1899, to which the Commissioners of the Choctaw and Chickasaw Nations had already agreed, and insert the words, "All persons duly identified"; and thereafter on the theory that the Mississippi Choctaws on that schedule had not been "duly

identified," the Secretary of the Interior disapproved the entire roll, thus depriving many hundreds of Mississippi Choctaws of the rights found due them by the report of March 10, 1899, and which had been agreed to by the Commissioners representing the Choc-
48 taw and Chickasaw Nation-, thus annulling the actual agreement of February 7, 1901, of the Choctaw and Chickasaw Nations themselves. Other changes will be observed in the redrafting of these sections, injurious to the Mississippi Choctaws. (R. L. O., Exhibit 1, pages 255 and 248.)

The Secretary of the Interior submitted this modified agreement, notwithstanding it did not have the approval of the Choctaw and Chickasaw Commissioners, although it had their names printed on the bottom of the agreement, and this, his own report, shows (R. L. O., Exhibit 1, page 255); as he states in his report that the representatives of the two tribes do not assent to the change made in Article 8. It is assumed that their consent was obtained to the redrafting of the Mississippi Choctaw item in Section 13, the injury of the Mississippi Choctaws.

Your petitioners resisted the passage of this agreement because of the injury done to the Mississippi Choctaws and demanded a hearing; this demand caused the failure of the passage of this agreement and resulted in an extension of the time in which the Mississippi Choctaws might remove by over eighteen months from February 1901 to January 1, 1903.

In 1902, July 1st, Congress passed the so-called Choctaw and Chickasaw agreement, in which by Sections 41, 42, 43 and 44 various conditions were imposed on the Mississippi Choctaws injurious to them.

49 Your petitioners resisted these petitions in vain, both before the Interior Department and before the Committees of Congress, which had the same for consideration. These conditions required the Mississippi Choctaws—

First, to remove within six months after personal identification—a condition with which very many of them were unable to comply because of their known contractual relation to their employers of Mississippi; and their well-known intellectual and financial weakness;

Second, they were required within twelve months after the date of identification to submit proof of their removal—a requirement which many ignorant full-bloods would easily neglect, and thus bar themselves of the right, even after they had been identified and after they had removed to the Choctaw Country;

Third, they were required by Section 42, to continuously reside for three years upon the land of the Choctaw and Chickasaw Nation. They were further required to make due proof of such continuous bona fide residence before such officer as might be designated by the Secretary of the Interior. [This section was construed by the attorneys of the Choctaw Nation to require each individual to reside upon the land allotted to him, a contention which was defeated be-

cause it was too utterly unreasonable to ask that a married
50 woman, a minor, or an insane person, should live away from the husband, father or curator.]

This condition of Section 42 would obviously exclude any Mississippi Choctaw, even if he had removed within six months, as required by Section 41, and even if he had, within twelve months from the date of his identification, made proof of his removal within six months, unless he continuously resided in the Choctaw Country for three years and furnished proof thereof.

Section 44 imposed a further condition that within four years after his enrollment, if a Mississippi Choctaw failed to make proof of such continuous, bona fide residence for the three years prescribed, even if he had complied with every other condition, he should be deemed to have acquired no interest in the lands allotted to him. These grossly unjust conditions were intended to deprive, and would have deprived, a large number of Mississippi Choctaws of their rights, even after they had complied with every previous condition, if it had not been for the act of July 21, 1906, procured by your petitioners which eliminated these unfair conditions and prevented any discrimination against the Mississippi Choctaws. (See R. L. O., Exhibit 1, page 332.)

The bill of July 1, 1902, known as the Choctaw Chickasaw Agreement, passed over the protest of your petitioners, and in spite of every effort that they could make for its proper amendment.
51 While this matter was pending your petitioners, on April 24, 1902, submitted a memorial to the Senate and House of Representatives and caused its reference to the Committee on Indian Affairs, demanding an amendment protecting the Mississippi Choctaws against these injurious provisions. (Senate Document 319, 57th Congress, 1st Session. R. L. O., Exhibit 1, page 281.)

Your petitioners argued the matter before the Committees, but were unable to overcome the influence of the Interior Department and of the Dawes Commission, which supported the contention of the Interior Department.

By the Indian Appropriation Act of July 1, 1902, it was provided that three hundred and twenty acres of land should be set apart as an allotment to each member of the Choctaw and Chickasaw Nation. (See R. L. O., Exhibit 1, page 301.)

On March 15, 1904, your petitioners, not having been able to obtain relief for the Mississippi Choctaws from the onerous conditions imposed by the Act of July 1, 1902, submitted a memorial to the Senate and House of Representatives of the United States, praying for an extension of time within which their right to remove to the Choctaw Country might be permitted, and for the passage of House Bill 13,560, and calling attention to the bill inequity brought by the attorneys of the Choctaw Nation against the Dawes
52 Commission to forbid them to enroll Mississippi Choctaws, who had, in the slightest degree, departed from the requirements heretofore complained of.

On June 21, 1906, your petitioners drafted and procured the passage of the following item, to wit:

"No distinction shall be made in the enrollment of full-blood Mississippi Choctaws, who have been identified by the United States Commission to the Five Civilized Tribes, and who had removed to the Indian Territory prior to March 4, 1906, and who shall furnish proof thereof."

(See Indian Appropriation Act—Five Civilized Tribes—approved June 21, 1906; R. L. O., Exhibit 1, page 382.)

This final Act was of extreme importance in protecting the Mississippi Choctaws from the technical construction invoked by the Choctaw attorneys in their bill in equity, and in this manner the previous services of your petitioners of the Mississippi Choctaws were perfected, and made thoroughly effective, in their behalf wherever they had actually removed to the Choctaw and Chickasaw Country prior to March 4, 1906.

Your petitioners were unable to prevent the Interior Department and the Dawes Commission from leaving the Mississippi Choctaws on the schedule of 1899 in a state of uncertainty as to whether they were entitled to remove under the schedule of identification
53 of 1899, because the identification by the Dawes Commission without the approval of the Secretary of the Interior, was held for eight years by the Interior Department as indeterminate, and those who were identified on the roll of March 10, 1899, although prima facie approved by the Secretary of the Interior, were finally rejected by the Secretary, after that roll of identification had been in his office for eight years, less seven days. This treatment of the Mississippi Choctaws lead to the exclusion of about one thousand of their number, who were identified by the Dawes Commission, and whose enrollment had been agreed to by the Commissioners of the Choctaw and Chickasaw Nations in the agreement submitted to the Department of the Interior of February 7, 1901.

V.

5. Your petitioners further respectfully show that inasmuch as the original purpose of your petitioners as to the Mississippi Choctaws, including their personal removal to, and settlement in, the lands of the Choctaw and Chickasaw Nations, could not be effectuated, they do not claim that they are entitled, by reason of the services hereinbefore shown to have been rendered, to one-half of the value of the lands or other property acquired by the Mississippi Choctaws, as the result of your petitioners' services but they respectfully aver
54 that, on account of such services, they are entitled to a reasonable compensation.

They aver and charge that the lands allotted in the Choctaw and Chickasaw Nation to the Mississippi Choctaws are admirably adapted for agricultural purposes; that an average allotment of three hundred and twenty acres is worth, at a fair valuation, four thousand dollars; that the membership allotments conferred upon the said Mississippi Choctaws by reason of the petitioners' services, in the general or common property of the Choctaw and Chickasaw Nation,

are each of at least the value of two thousand dollars; so that they aver and charge the value of all rights and properties acquired by each of the Mississippi Choctaws, by reason of petitioners' services, equals at least the sum of six thousand dollars.

They further aver and charge that, as shown by the certified copy of the final roll of Mississippi Choctaws, transmitted to this Court in this cause of May 18, 1907, there were enrolled 1,441 persons and under the Act of July 1, 1902, 137 persons, new born, making a total of 1,578 Mississippi Choctaws, who upon the valuation of six thousand dollars per individual, for the rights acquired by reason of your petitioners' efforts, represent a valuation of more than nine millions of dollars.

Your petitioners aver and charge that your petitioners alone are responsible for presenting the rights of the Mississippi Choc-
55 taws; that these rights were resisted by the Dawes Commission and by the Choctaw authorities after they were presented, and except for the continuous and persistent efforts of your petitioners, no Mississippi Choctaw would have ever received a dollar or an acre of land.

6. Your petitioners further charge that by Act of Congress, approved May 29, 1908, and by section 27 thereof it is provided—

"That the Court of Claims is hereby authorized and directed to hear, consider and adjudicate the claims against the Mississippi Choctaws, of William N. Vernon, J. S. Bounds and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable and justly due therefor, which judgment if any shall be paid from any funds now or hereafter due such Choctaws as individuals by the United States. The said William N. Vernon, J. S. Bounds and Chester Howe are hereby authorized to intervene in the suit instituted in the said Court under the provisions of Section nine of the Act of April twenty-sixth, nineteen hundred and six, in behalf of the estate of Charles F. Winton, deceased: *Provided*, That the evidence of the intervenors shall be immediately sub-
56 mitted: And provided further, That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claims of the said Winton and of the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the Governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws. (35 Stat. L. 457.)"

They charge that the Winton referred to in the quoted paragraph is the Charles F. Winton, for whose services and the services of whose associates, this original suit was authorized.

Names of the defendants in this proceeding against whom your petitioners are entitled to a judgment, and a description of the lands

upon which your petitioners are entitled to a lien in this proceeding, will be found in the schedule showing lands selected by enrolled Mississippi Choctaws, filed in this court, submitted by letter of James Rudolph Garfield, Secretary, on May 18, 1907, described as a "List of Mississippi Choctaws who have selected land in allotment, with their roll numbers and description of their selections," beginning with roll No. 1, William Hancock Hussey, to whom was allotted the following lands:

57 **Homestead.**

The W. ½ of the E. ½ of the N. E. ¼,
S. E. ¼ of N. W. ¼ of N. E. ¼,
S. W. ¼ of N. E. ¼,
N. ½ of N. W. ¼ of S. E. ¼,
Sec. 7, T. 4 N., R. 3 E.

Exclusive of Homestead.

N. E. ¼ of N. E. ¼ of N. E. ¼,
S. W. ¼ of N. W. ¼ of N. E. ¼,
E. ½ of E. ½ of N. W. ¼,
N. E. ¼ of N. E. ¼ of S. W. ¼,
S. E. ¼ of N. E. ¼ of N. E. ¼ of Sec. 7,
S. ½ of S. W. ¼ of N. W. ¼ of
Sec. 8, T. 4 N., R. 3 E.,
W. ½ of S. E. ¼ of S. W. ¼,
Sec. 13, T. 5 N., R. 2 E.,

and including 1441—No. 534 and No. 535 on said roll, and including also all persons named under the list of new-born Mississippi Choctaws, beginning on page 208 and continuing to page 227 of said roll, the last name thereon being No. 137, the whole of which purports to be and is for the purposes of this petition, admitted to be a complete roll of the Mississippi Choctaws, to whom allotments of land in the Choctaw and Chickasaw Nation have been made, and upon whose said allotments as described in said exhibit, your petitioners are entitled to and claim liens to secure the payment of such judgment as may be rendered in this cause.

58 7. Petitioners further aver and charge that under the act conferring original jurisdiction of this cause upon this Honorable Court, as hereinbefore set out in paragraph one, your petitioners are entitled to receive payment of such judgment as this court may award, from any funds now or hereafter due such Choctaws by the United States; they further charge that they also, under the act of Congress cited in paragraph six of this petition, are entitled to and have a lien on the lands of the defendants, the Mississippi Choctaws, to whom allotments have been made as shown upon the certified copy of the roll hereinbefore referred to secure the payment of such judgment as this court may award.

Wherefore, in consideration of the premises, your petitioners pray

that they may have judgment for a sum deemed by this Honorable Court to be a fair and reasonable compensation for the services hereinbefore recited, and that the decree provide for the payment of such judgment out of such funds as may be then due from the United States to such Choctaws, and that they may have the further judgment or decree of the court, declaring the said judgment to be a lien upon the lands of the said Misssissippi Choctaws whose names appear upon the said certified copy of the said roll, in which said lands are described; and to that end, and to the end that your petitioners may receive their compensation, such as shall be here adjudged, that all proper orders and decrees be made and entered.

59–71

And your petitioners will ever pray.

WILLIAM H. ROBESON,
Attorney for Petitioners.
ROBERT L. OWEN,
Appearing for Himself.

UNITED STATES OF AMERICA,
District of Columbia, ss:

This day personally appeared before me, James K. Jones, and having been first sworn, deposes and say- I am the administrator of James K. Jones, deceased, and am one of the petitioners in the foregoing petition; I have read the petition carefully; the statements therein made, of my personal knowledge, are true; those made on information and belief, I believe to be true.

WM. H. ROBESON.

Subscribed and sworn to before me this 16″ day of November, 1911.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

* * * * * * *

72 *Intervening Petition of William N. Vernon.*

The original intervening petition of William N. Vernon, was filed by leave of Court on July 10, 1908. Subsequently to-wit, by leave of Court on Feb. 24, 1911, the petition was amended so that it now reads as follows:

In the Court of Claims.

No. 29,821.

The Estate of Charles F. Winton, Deceased, and Others,

vs.

Jack Amos and Others, Known as the "Mississippi Choctaws".

Intervening Petition as Amended of William N. Vernon.

To the Honorable Chief Justice and Judges of the Court of Claims, your petitioner respectfully represents:

First. That he is a citizen of the United States residing at Kiowa, Oklahoma; that he files this petition in his own right, and that he is the identical William N. Vernon named and referred to in Section 27 of the Act of Congress of May 29, 1908 (Public 156) said act being as follows:

"Sec. 27. That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. S. Bounds and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable and justly due therefor, which judg-
73 ment, if any, shall be paid from the funds now or hereafter due such Choctaws as individuals by the United States. The said William N. Vernon, J. S. Bounds and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of Section nine of the Act of April twenty-six, nineteen hundred and six, in behalf of the estates of Charles F. Winton, deceased: Provided, That the evidence of the interveners shall be immediately submitted: And Provided Further, That the lands allot-ed to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claims of the said Winton and the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the Governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws."

Second. That your petitioner is a native of Mississippi and knew of the claim of the Mississippi Choctaw Indians in that state to rights in the Choctaw Nation in the Indian Territory, and in 1901 he entered into contracts with certain Mississippi Choctaw Indians residing in Mississippi under which he agreed to assist said Indians to remove to the Choctaw Nation in the Indian Territory and to assist them in obtaining lands, moneys and other rights under the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation believed to be due said Indians both by your petitioner and the Indians who were parties to such contracts.

Third. That the condition of the Choctaw Indians who were parties to the contracts made with your petitioner in 1901 and later dates was that of extreme poverty. They were without money or means from which money could be derived to pay for trans-
74 portation from Mississippi to the Choctaw Nation, or to buy food or clothing necessary to sustain and clothe themselves and their families, after their arrival in the nation; and the contracts made by your petitioner were each and every one made in good faith for the purpose of aiding and the carrying out of the law and protection of the contracting Indians. That these people were tenants in Mississippi, and under the laws of that State, it was a misdemeanor to secure the removal of persons situate as they were without the payment of any amounts due the landlord and that they were so indebted in varied amounts which were necessarily paid prior to this removal.

Fourth. That prior to the enactment of the Act of Congress of July 1, 1902, the same being the supplemental agreement between the Choctaw Indians and the United States, your petitioner moved from Mississippi to the Choctaw Nation at his own expense one Choctaw Indian and in contemplation of further removals, under his contracts, spent a large amount of time and considerable sums of money in ascertaining where lands could be obtained in said Choctaw Nation for the benefit and use of said Mississippi Indians; it being a fact that nearly all the good agricultural lands in the Choctaw Nation were claimed by individuals who, by reason of improvements thereon or the enclosure of same by fences, made a claim to a right of possession and prevented the location of any other individuals thereon, without a purchase of the improvements and of their claims thereto, and it was the custom in the Choctaw Nation at that time to transfer said improvements and said right of possession by Bills of Sale; it being a further fact that under the rules and regulations of the Department of the Interior, as enforced by the Commission to the Five Civilized Tribes, commonly known as the Dawes Commission, that each legal subdivision had been inspected by officers of said Department and the improvements thereon listed by description, and the name of the alleged owner, and each person
75 applying for land was obliged to show that he or she had purchased said improvements from said owner, as listed, or that the same were excess holdings, and to state under oath that no person other than the said applicant had a superior right of possession, under improvements to those of the applicant.

And by reason of said facts, it became and was necessary to ascertain definitely where there were vacant and unimproved land commonly termed "public domain" or "national domain" (meaning the unappropriated tribal lands of the Choctaw Nation) or to obtain by purchase under the Bills of Sale or by gift, or grant, the rights of possession, so that said Mississippi Choctaw Indians might secure allotments and obtain title to their just and legal portion of the Choctaw Nation, and the expenses so incurred are given on a schedule marked "General Expenses" "Exhibit C" and hereunto attached and made a part thereof.

Fifth. That under the provisions of Sections 41, 42, 43 and 44 of the act of Congress of July 1, 1902, the Mississippi Choctaws residing in Mississippi who were included within the terms of said act were obliged to move to the Choctaw Nation within six months from the date of their identification or lose their estates in said nation, and in compliance with the terms of his contract your petitioner moved from the State of Mississippi to the Choctaw Nation, Indian Territory, between 60 and 70 Choctaw Indians, the names of whom are hereunto attached upon a schedule marked "Exhibit A", and made a part of this petition. That in moving said Indians your petitioner paid all of the expenses which included the costs for travel from their former homes to the railway station in Mississippi, railroad fare from their nearest station to Meridian, Mississippi, from which point a common rate of railroad fare to points in the Indian Territory had been obtained, railroad fare from Meridian, Mississippi, to Kiowa Indian Territory, (now Oklahoma),
76 sustenance enroute, and incidental expenses including clothing, medicines and care, and including the expenses of an interpreter and a man to look after the wants of these people while traveling; that after arriving in Kiowa, Indian Territory, now Oklahoma, your petitioner provided houses, food, necessary furniture and other things for the Mississippi Choctaws so moved, and purchased rights of possession to lands on some of which houses had theretofore been erected, including fences and other improvements and on others of which houses and other improvements were afterwards erected, all at the expense of your petitioner, and that your petitioner furnished or caused to be furnished, general supplies consisting of food, clothing and household necessities to said Mississippi Choctaw Indians and the necessary money to permit said Indian to appear before the Dawes Commission and make proof of their establishment of residence in Indian Territory, together with their witnesses who were required to so appear, and assisted the Indians in alloting the lands so purchased by furnishing money to defray expenses to land office and resurvey by him under his contracts, and purchased for them wagons, teams, plows and agricultural implements, in some cases breaking the lands to the end that the Indians might become self-sustaining and the policy of government be carried out, furnishing seed where needed and paying for medical attendance for such parties when sick, and the funeral expenses for those who died, and that said expenditures were charged on book

accounts, the ledger balances of which are given on a schedule hereunto attached and marked "Exhibit B" and made a part of this petition. Said schedule being approximate in amount based on the best information available at the time and place of verifying the petition. A complete schedule will be submitted with the testimony for the information of the Court.

Sixth. That your petitioner before undertaking this work for the Mississippi Choctaws was a practicing lawyer in Rockwall
77 County, Texas, with a practice extending over a large portion of said State, and that the demands upon his time and the labor of caring for and protecting the Mississippi Choctaws compelled him to relinquish his practice and caused him to remove to the Choctaw Nation where he could properly look after the interests of the parties with whom he had formed contractual relations and to whom he had promised the aid and assistance, not only of money, but of his abilities as a business man, and a lawyer, and that he gave to said Mississippi Choctaws a large portion of his time, his energies, and his abilities, from the time of the making of his original contract up to date hereof; but that after the disavowment of responsibility under said contracts by said Indians, which disavowment or denial has been by refusal to keep either the letter or spirit thereof made at different times by different individuals, he engaged in other business and he therefore alleges that his services were reasonably worth the sum of $2,500 per year, beginning July 1, 1902, and extending to July 1, 1905.

Seventh. That during the month of September, 1902, your petitioner met W. P. Donnel, who, at that time, was minister in charge of the Choctaws for the M. E. Church South, at Tahlechula, Miss., and employed him to assist in the removal of the Mississippi Choctaws from Kemper county, Mississippi, to Kiowa, Indian Territory, now Oklahoma; that W. P. Donnell continued in this service from said date in September, 1902, to February of 1903; that said services were reasonably worth the sum of $100 per month; during that time the said W. P. Donnel devoted his entire time to the Mississippi Choctaws and was thereby incapacitated for other labor; that under the contract made with your petitioner and the said Donnel, said agreement being a verbal agreement, said Donnel was to be paid for such service at the time your petitioner received pay-
ment under his contracts from the Mississippi Choctaws; that
78 no such payment having been made, nothing has been paid to said Donnel, and said claim for services is separate and apart from the other items in this petition and is justly due for service rendered, the amount hereof being six hundred dollars.

Eighth. That by reason of your petitioner's expenditures of money in purchasing valuable lands and improvements subsequently allotted to these Mississippi Choctaws, now in their possession and on which many of them reside, and by reason of his business ability exercised on their behalf and in their interest, said Mississippi Choctaws now have allotments of much greater value than the ordinary Mississippi Choctaw allotments; exceeding in value by many thou-

sands of dollars either the appraised value of allotment or the average value of the Mississippi Choctaw allotment and that the estate so obtained is directly due to the money furnished, the judgment exercised by your petitioner under his contract.

Ninth. That none of the sums of money heretofore mentioned have been paid or refunded by the Mississippi Choctaw Indians, that none of them are entitled to credits, except such as appear on the schedule of account attached to this petition; that the sums were expended and accepted under contract which the said Mississippi Choctaw Indians as individuals have repudiated by act, and by failure to comply with the terms thereof, and your petitioner has at all times acted in good faith, in strict compliance with what he believed, and now believes to be the law and in justice to the defendants individuals.

Tenth. That your petitioner is informed and believes the individuals named in the schedule made a part of this petition are a portion of the Mississippi Choctaws from whom the petitioner, the estate of Charles F. Winton, seeks a recovery in the original
79 petition filed in this case. That your petitioner is entitled for the reason set forth herein to a lien on the lands and money belonging to the individuals so named prior to any other person or persons whomsoever, for the reason that the lands so held were acquired with the money furnished by him and are now the property of said individuals by reason of the expenditure of the money and the performance of the services as set forth herein, and that your petitioner, as he believes, has an equitable right of intervention in said suit, irrespective of the jurisdictional act set forth herein.

Wherefore, Your petitioner prays:

First. That this petition may be filed and docketed as an intervening petition on case number 29,821 as referred to herein.

Second. That he may have judgment against the individuals named in the schedule attached and made part of this petition for the respective amounts expended upon their behalf, and that accounts carried in the names of families may be prorated among the members of said families.

Third. That he may have judgment for the services rendered, and that in equity the same shall be prorated between the individuals receiving the benefit thereof, and that interest may be allowed and computed from the dates shown in the schedule at the rate of 6 per cent. per annum for the cash expended and advanced; that the judgments shall be decreed a lien, as provided by the jurisdictional act; and for such other and further relief as to the court, in its wisdom, may seem just and equitable, and your petitioner will ever pray, etc.

WILLIAM N. VERNON,
Petitioner.

HOWE & WRIGHT,
Attorneys for Petitioner.

W. S. FIELD,
Of Counsel.

80 STATE OF OKLAHOMA,
County of ——, ss:

William N. Vernon being duly sworn on oath states that he has read the foregoing petition by him subscribed; that he is the petitioner named therein; that the facts stated in said petition as being of his knowledge are true and the facts stated upon information and belief he verily believes to be true.

WILLIAM N. VERNON.

Subscribed and sworn to before me this 30th day of June, 1908.

[SEAL.] JNO. O. TOOLE,
County Clerk, Pittsburg County, Oklahoma.

81 AMENDED EXHIBIT "A."

(Filed Feb. 24, 1911.)

List of enrolled Mississippi Choctaws, against whom petitioner claims, giving names of the heads of families and the names of the other members thereof and showing the total claim against each family, as a whole.

Roll. No.	Name.	Age.	Sex.	Blood.	
775	Isaac, Wilson	34	M.	Full	1
776	" Siney	29	F.	"	2
777	" Sift	12	M.	"	3
778	" Ellen	7	F.	"	4
779	" Jim	5	M.	"	5
780	" Lela	2	F.	"	6
	Entire claim against the family, to be proportioned..$1,726.65				
608	Billy, Jack	53	M.	Full	7
609	" Leanna	58	F.	"	8
610	" Minnie	17	F.	"	9
611	" Hettie	15	F.	"	10
612	" Camille	7	F.	"	11
	Entire claim against the family to be proportioned....$606.67				
164	Willis, John	38	M.	Full	12
165	" Hickman	19	M.	"	13
166	" Margaret	17	F.	"	14

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167	" Lillie	8	F.	"	15
168	" Fannie	7	F.	"	16
169	" Elma	3	F.	"	17
170	" Sam Houston	1	M.	"	18
	Entire claim against the family, to be proportioned...$601.47				

613	Sturdevant, Charley	60	M.	"	19
	Entire claim against this individual.....$1,214.58				
319	Willis, Riley	26	M.	Full	20
320	" Lena (wife)	24	F.	"	21
	Entire claim against the family, to be proportioned...$578.00				
558	Thompson, Ben	36	M.	Full	22
559	" Martha	36	F.	"	23
560	" Leona	15	F.	"	24
561	" Thomas	11	M.	"	25
562	" Maggie	5	F.	"	26
322	Reese, Salina	21	F.	"	27
323	" Manuel	2	M.	"	28
	Entire claim against the family, to be proportioned..$1,521.68				
555	West, John	25	M.	"	29
	Entire claim against this individual.....$57.00				
639	Bull, Houston	20	M.	"	30
	Entire claim against this individual.....$67.00				
83					
19	Dansby, Jacob	39	M.	Full	31
	Entire claim against this individual.....$38.95				
83	Golden, Abe	26	M.	Full	32
	Entire claim against this individual.....$764.93				
20	Billey, Cornelius	15	M.	Full	33
	Entire claim against this individual.....$58.96				
250	Bob, Morris	43	M.	Full	34
1357	Guss, Leanna, (wife)	42	F.	"	35
	Entire claim against the family, to be proportioned...$545.68				
1367	Bob, Alex	57	M.	Full	36
1368	" Edna (wife)	47	F.	"	37
	Entire claim against the family, to be proportioned....$87.11				
625	Dansby, Isom	53	M.	Full	38
	Entire claim against this individual.....$891.37				
311	Billy, Alice	28	F.	Full	39
312	" Nannie	5	F.	"	40
313	" Clay	4	M.	"	41
	Entire claim against the family, to be proportioned....$29.30				
624	Phillip, Tom	21	M.	Full	42
	Entire claim against this individual.....$268.33				

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861	Wilson, Willie	30	M.	Full	43
	Entire claim against this individual				$32.33
607	Dansby, Lewis	32	M.	Full	44
	Entire claim against this individual				$83.20
147	Guss, Nancy	20	F.	Full	45
148	" Sina	16	F.	"	46
	Entire claim against the family, to be proportioned				$495.55
967	Lewis, Sam	30	M.	Full	47
968	" Pollie	27	F.	"	48
969	" Jim	11	M.	"	49
970	" Dorano	7	M.	"	50
971	" Ump	5	M.	"	51
	Entire claim against the family, to be proportioned				$261.04
706	Jacob, Charley	34	M.	Full	52
707	" Louisa	31	F.	"	53
708	" Ebbie	1	F.	"	54
	Entire claim against the family, to be proportioned				$175.81
40	In-pun-nubbee, Mingo	69	M.	Full	55
	Entire claim against this individual				$88.65
240	York, Taylor	17	M.	Full	56
	Entire claim against this individual				$83.65

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845	Gibson, Ben	50	M.	Full	57
	Entire claim against this individual				$61.65
134	Wilkerson, Sam (or John)	32	M.	Full	58
	Entire claim against this individual				$15.40
592	Simon, Albert	26	M.	Full	59
	Entire claim against this individual				$10.00
159	Phillip, Ples Tinsley	20	M.	Full	60
	Entire claim against this individual				$75.00
514	Lewis, John	51	M.	Full	61
	Entire claim against this individual				$75.00
	To Balance				$10,514.86
	Expenses not charged in any account				1,477.47
	Total				$11,992.33

Have original expense books.

[Endorsed:] In the U. S. Court of Claims. No. 29821. Charles F. Winton et al. vs. Jack Amos et al. Amended Petition of W. N. Vernon. Wm. W. Wright, Att'y.

85½ EXHIBIT "B."

	2,597.65
	768.67
	781.57
	1,661.48
	822.08
	1,850.08
	31.60
	50.36
	57.00
	78.17
	67.00
	605.30
	23.15
	52.90
	979.67
	76.65
	741.88
	117.11
	1,178.67
	39.64
	352.81
	43.85
	113.18
	164.66
	509.09
	315.68
	217.81
	196.10
	88.65
	83.65
	61.65
	15.40
	10.00
	75.00
	75.00
	75.00
	75.00
	15,053.17
Expenses not charged.....	1,477.47
	16,530.64

86

Exhibit "C."

Expenses of W. N. Vernon in traveling to and from Miss., including expenses while traveling in the Territory looking for and purchasing improvements for Indians, homes not charged to any Indian or included in book accounts.

Original Expense Books will be offered in evidence.

Aug. 29, '01, to 23, '01. Expenses to McAlester and other points	$14.90
Sep. 1, '01, to 10, '01. Expenses to Meridian and other points in Miss.	90.00
Oct. 14, '01, to 28, '01. Expenses to Meridian and other points	231.90
Nov. 5, '01, to 8th. Expense to Kiowa, I. T., and other points	19.15
Nov. 11, '01, to 15, '01. Expense to Ada, Madill, I. T., and other points	30.00
Nov. 24, '01, to 29, '01. Expenses to Purcell and other points	35.20
Jan. 6, '02, to 8, '02. Muskogee and other points	22.25
Mar. 10, 02. Ft. Smith	5.00
	$448.40

Page 2. W. N. Vernon Expense Account continued.

Brought forward from Page 1	$448.40
Mar. 30, '02, to Apr. 1, '02. Expense at Kiowa and McAlester	13.15
May 6, '02, to May 18. Expense Meridian, Miss., and other points	97.30
June 15, '02, to 18th. McAlester and other points	15.15
June 24, '02, to 26th. Expense Kiowa and Rockhouse Place	15.00
July 1, '02, to 5th. Looking at improvements in county near Kiowa	30.65
July 9, '02, to 11th. Kiowa and other points	32.85
87 " 20th to 23rd " " " "	13.80
" 27th to Aug. 7th. Expenses looking up improvements	25.20
Aug. 8 and 9, '02. Expenses at Kiowa	13.20
Aug. 18th to 21st. " " "	18.95
	$713.65

Page 3. Vernon Expenses continued.

Brought forward from Page 2	$713.65
Aug. 26, '02, to Sep. 12, '02. Expenses to Meridian, Miss.	105.60
Sep. 17th to Sep. 19, '02. Expense in Territory	15.90

Sep. 28th to Oct. 3, '02. Expense sending Indians to Miss.	48.90
Oct. 6, '02, to 8th. Expense Kiowa and vicinity	14.00
Oct. 17th to 27th. Expense Kiowa and vicinity	15.30
Oct. 29th to Nov. 29, '02. Expense to Miss. and return, less transportation for Indians	238.00
Nov. 23rd to 26, '02. Expense at Kiowa	21.97
Nov. 30, '02, to Dec. 3rd. Expense at Kiowa	20.05
Dec. 8, '02, to Dec. 24, '02. Expense to Meridian, Miss., and return, less transportation for Indians	79.10
Dec. 28, '02, to Jan. 1, '03. Expense at Kiowa	31.00
Jan. 1, '03, to Jan. 16, '03. Expense at Kiowa	50.70
Jan. 18, '03, to 22nd. Expense at Kiowa	20.05
Jan. 20th to Feb. 4th. Expense to Meridian, Miss., less transportation for Indians	103.25
Total	$1,477.47

88 CITY OF WASHINGTON,
District of Columbia, ss:

I, William W. Wright, being first duly sworn, upon oath depose and say:

I am a member of the firm of Howe & Wright, the attorneys named in the foregoing and annexed petition. On the 10th day of July, 1908, I served notice upon the Governor of the Choctaw Nation of the foregoing suit by mailing a true copy of said petition, by registered mail, addressed to Green McCurtain, present Governor of the Choctaw Nation, addressed to him at McCurtain, Oklahoma.

WILLIAM W. WRIGHT.

Subscribed and sworn to before me this 10th day of July, 1908.

[SEAL.] S. A. TERRY, *Notary Public.*

89 *Intervening Petition of Chester Howe and His Associates.*

On August 22, 1908, the original intervening petition of Chester A. Howe and his associates was filed by leave of Court. On June 18, 1909, Katie A. Howe, as adm'x., was allowed to be substituted as claimant by the Court. On January 25, 1911, by leave of Court, an amended petition in her name was filed, and on Oct. 13, 1913, a second amended petition was filed, both of which follow:

In the Court of Claims.

No. 29821.

THE ESTATE OF CHARLES F. WINTON, Deceased, and Others,

vs.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

Amended Petition of Katie A. Howe, Administratrix of the Last Will and Testament of Chester Howe, Deceased.

To the Honorable Chief Justice and Judges of the Court of Claims:

Now comes your petitioner, Katie A. Howe, above named, and for her amended petition respectfully shows:

Chester Howe, deceased, the original intervener in the above-entitled cause, departed this life on the first day of October, 1908, and thereafter said suit, under order of this Honorable Court, was duly revived in the name of your petitioner as executrix of the last will and testament of Chester Howe, deceased.

The original petition filed in this case by Chester Howe, deceased, is hereby amended by adding thereto certain additional paragraphs, which follow the same numerical order as adopted in said original petition, as follows:

20. That after the legislation providing for the identification of Mississippi Choctaws, contained in the Act of June 28th, 90 1899, commonly called the "Curtis" Act, said Chester Howe represented a large number of Mississippi Choctaws before the Commission to the Five Civilized Tribes, the Indian Office, and the Secretary of the Interior, and by reason of his arguments and efforts in behalf of said clients obtained favorable rulings from said Departments, which so simplified the consideration of applications, that it was possible for large numbers of other persons to successfully present their claims for identification.

21. The Commission to the Five Civilized Tribes about the year 1899 claimed exclusive jurisdiction in all citizenship matters arising in the Five Civilized Tribes and maintained this attitude until their position was subsequently reversed by decision of the Secretary of the Interior. During this time the Commission refused to allow affidavits of witnesses to be filed in behalf of applicants for identification as Mississippi Choctaws and even refused to make a record of the cases so that any reviewing officer might have an opportunity to ascertain whether or not justice had been done. Accordingly, October 13th, 1899, Mr. Chester Howe, as attorney, filed in the Indian Office at Washington, D. C., the applications of Isaac Morgan et al., and Sarah McDonough et al., Mississippi Choctaw applicants, asking that they be identified as Mississippi Choctaw Indians claiming the right to enrollment under the 14th article of the treaty of 1830. These applications were submitted with the statement that

it was shown that the applicants had moved to the Choctaw Nation and that the Commission had made no investigation relative to ascertaining whether they were descendants of Mississippi Choctaws and raising the question whether said Commission was carrying out the previous instructions of the Department.

22. Thereafter, by Departmental decision in said applications, a rule was adopted which was applied in all subsequent cases,
91 under which the said Commission was required to make a complete record of all cases and permit the filing of affidavits so that, upon appeal, the Department at Washington would be able to ascertain whether or not the Commission had properly developed the facts. By reason of such ruling, obtained through the direct efforts of Chester Howe, all subsequent applicants succeeded in having their day in Court and a complete record was thereafter made in all Mississippi Choctaw cases.

23. On or about the year 1900, said Commission again refused to receive certain applications for enrollment as members of the Choctaw Tribe and also refused to make a record of such cases. Whereupon the question was presented to the Honorable Commissioner of Indian Affairs by said Chester Howe, and, in reply, letters were received from the Commissioner of Indian Affairs addressed to said Chester Howe, dated January 24th and February 13th, 1900, respectively, advising him that by decision of the Department said Commission had been instructed to receive certain applications and also to make a record thereof, etc., the original of said letters being hereto attached marked Exhibits Nos. 1 and 2.

24. Thereafter, to-wit, about the year 1901, it was discovered by said Chester Howe and his agents in the field, that the said Commission to the Five Tribes was conducting the identification of Mississippi Choctaw applicants in an insufficient way and that the Commission failed to develop the essential facts necessary to determine the rights in applicants to identification as Mississippi Choctaws.

25. Whereupon said Chester Howe, after having duly entered his appearance by letter in the case of Lizzie Woodward et al., directed the attention of the Commissioner of Indian Affairs to such
92 practice and conduct of said Commission in Mississippi Choctaw cases, all of which resulted in the subsequent action of the Indian Office in their letter of April 30th, 1901, addressed to the Honorable Secretary of the Interior, and the decision of the Honorable Secretary of the Interior by letter of June 10th, 1901, addressed to the Commission to the Five Civilized Tribes, requiring them to make such investigation of each claim as would develop the essential facts and the case was remanded for such purpose, and this important ruling enured to the benefit of all subsequent applicants. (Certified copies of said letters being on file in this case.) (See reply of the Interior Department to call of June 17th, 1910, and filed November 12th, 1910.)

26. Thereafter there came before the Commissioner of Indian Affairs an application of certain Mississippi Choctaws known as the consolidated application of Jim Gift et al., who had been denied

identification by said Commission because it did not appear from the record that the ancestor through whom claim was made was a patentee under the 14th article of the treaty of 1830; a list of such applicants being hereto attached marked Exhibit No 3. Thereafter, on June 25th, 1904, an appearance was entered and a brief filed in said case by Chester Howe, as attorney for applicants, while said application was pending before the Commissioner of Indian Affairs.

27. Thereafter, to-wit, on November 23rd, 1904, a decision was rendered by the Assistant Secretary of the Interior, by letter addressed to the Commissioner of Indian Affairs, reversing the decision of said Commission and directing it to identify the applicants in said case as Mississippi Choctaws, in accordance with the recommendation of the Indian Office, etc., certified copies of said letters being hereto attached, marked Exhibits Nos. 4 and 5.

28. That the effect of this decision was far-reaching in that it caused a relaxation of the arbitrary rule of evidence required
93 by the Commission in the matter of 14th article applicants theretofore prevailing; because it was held that where the records of the Government showed that the applicant or the ancestor through whom claim was made subsequently received scrip in lieu of patent under article 14 of the treaty, such scripee was of equal standing with a patentee, as far as the line of proof was concerned, and thereafter the Department adhered to this rule.

29. That after the passage of the treaty of July 1, 1902, Chester Howe raised a large amount of money, to-wit, more than Five Thousand Dollars, which was sent to L. P. Hudson, his associate, and used largely for the purpose of paying the expenses of full-blood Mississippi Choctaws in order that they might come to those places in the State of Mississippi where the officers of the Dawes Commission were holding sessions for the purpose of identifying Mississippi Choctaws under the provisions of said treaty. That of all those applicants for identification under said treaty of July 1, 1902, said Chester Howe, through his associate, L. P. Hudson, represented about two-thirds. Other large sums of money were also expended in behalf of said applicants for identification in the paying of their board while attending the meetings of the Commission, and otherwise providing for their actual necessities of life, the exact amount of which your petitioner is unable to say.

30. That thereafter a number of Mississippi Choctaws were removed from the State of Mississippi to the Indian Territory, by said Chester Howe, within the statutory limit of time and they subsequently received valuable allotments of lands in the Choctaw and Chickasaw Nations, a list of whom are filed herein, referred to as Exhibit No. 6.

31. The persons mentioned in said list in addition to
94 unusual services rendered them in the matter of their identification and enrollment, had their debts paid in Mississippi by said Chester Howe in order that they might be removed to Indian Territory and, upon removal there, they were filed upon very valuable lands in the neighborhood of Roff, Oklahoma, having been able to do so by reason of the fact that the right to file thereon had

first been obtained by said Chester Howe in association with L. P. Hudson by reason of the purchase of improvements thereon and the subsequent erection of additional improvements.

32. It is believed that the legal services in the matter of the enrollment of the "Jim Gift" and "Seals" families whose names are set forth in Exhibit 3, should be considered by the court as extraordinary and therefore entitled to extra compensation, for the reason that such enrollment was entirely dependent upon the skill and zeal of the attorney of record, who successfully prosecuted a novel question before the highest tribunals of the Interior Department.

33. That thereafter said Chester Howe caused the persons identified and enrolled under said "Jim Gift" decision, to be moved from the State of Mississippi to Oklahoma, where they were filed upon valuable lands in the neighborhood of Roff, Oklahoma. That in such removal, it was first necessary to pay the indebtedness of the Indians due in Mississippi and thereafter furnish them with clothing, fuel, teams, farming implements, etc., and also the purchase of existing improvements on the lands filed, in order that the applicants for such allotments might have the prior right to file the same.

34. That the character of the lands upon which all of said transported Indians were filed was considerably more than the average commercial value and is now of the value of $30.00 per acre and upwards. Each of said persons received an allotment of at least the average amount of land approximately 320 acres for each
95 allotment. In addition, each of said persons *are* entitled to a distributive share of the tribal funds now in the hands of the Treasury of the United States and also an undivided interest in other funds arising by reason of the sale of coal and mineral rights in the Choctaw and Chickasaw Nations, etc., the exact value of this distributive share being unknown but, upon information and belief, of the value of several thousand dollars.

35. That in addition to the individual Mississippi Choctaws named in Exhibit No. 6 herein, said Chester Howe was the duly authorized attorney, under individual contracts, of all those Mississippi Choctaws with whom contracts had been made by J. F. Arnold, individually, the firm of Hudson & Arnold or L. P. Hudson, individually, and continued to represent all of them until after the approval of said Act of Congress known as the Treaty of July 1, 1902, and thereafter a considerable part of them, until the time of his death, October 1, 1908.

Prayers.

The premises considered, your petitioner prays as follows:

1. That this petition be considered by the court as supplemental to the original petition filed herein by said Chester Howe, deceased, and judgment rendered accordingly.

2. For such other and further relief as to the court may seem just and proper in the premises.

KATIE A. HOWE,
Executrix of Last Will and Testament of Chester Howe, Deceased.
WILLIAM W. WRIGHT, *Attorney.*

96 *Affidavit.*

DISTRICT OF COLUMBIA,
City of Washington, ss:

Katie A. Howe, being first duly sworn, upon oath deposes and says: She is the person named in the foregoing amended petition subscribed by her and that she has read the contents thereof and that the allegations therein contained are true to the best of her knowledge and belief.

KATIE A. HOWE.

Subscribed and sworn to before me this 19th day of January, 1911.

[SEAL.] A. M. PARKINS,
Notary Public, District of Columbia.

EXHIBIT No. 1.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, Feb. 13, 1900.

Chester Howe, Esq., Attorney-at-Law, 623 F St., N. W., Washington, D. C.

SIR: You are hereby informed that certain petitions, heretofore filed in this office by you as attorney, asking that an order be issued directing the Commission to the Five Civilized Tribes to receive certain applications for enrollment as members of the Choctaw tribe of Indians, and that it be required to make a record thereof, were transmitted to the said commission, February 8, 1900, with instructions that it take action in manner as requested, as follows:

Robert Moore, et al.....Land 5720—1900
T. L. Bayles.....Land 5721—1900
F. A. Hill, et al.....Land 5722—1900
Susan J. Tippett, et al.....Land 5723—1900
97 Joel B. Allen, et al.....Land 5724—1900
Geo. Patrick, et al.....Land 5725—1900
Amanda I. Dunn, et al.....Land 5984—1900
R. B. Peirce, et al.....Land 5985—1900
Mahala D. Shaw.....Land 5986—1900
L. V. Benson, et al.....Land 5987—1900

Very respectfully,

A. C. TONNER,
Assistant Commissioner.

C.F.H.—L.

EXHIBIT No. 2.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, January 24, 1900.

Chester Howe, Esq., Attorney-at-Law, 623 F St., N. W., Washington, D. C.

SIR: You are advised that the following petitions, for enrollment as members of one of the Five Civilized Tribes, filed by you in this office on the 10th day of January, 1900, have this day been forwarded to the Commission to the Five Civilized Tribes, with instructions that it make a record of the applications, and that it file and retain such papers as have been presented in their support, which instructions are agreeable to Departmental letters of December 26th and 28th, 1899, respectively:—

Florence Stark, et al.....Land 1763—1900
Joseph Johnson, et al.....Land 1767—1900
M. M. Davis, et al.....Land 1768—1900
Eliza J. Pearce, et al.....Land 1769—1900
Jerry Scarborough, et al.....Land 1770—1900
John Miller, et al.....Land 1771—1900
Florence Carroll, et al.....Land 1772—1900
Sarah Jane Ezelle, et al.....Land 1773—1900
Hiram O'Neill, et al.....Land 1774—1900
98 Catharine Whittler, et al.....Land 1775—1900
Obidiah Waller, et al.....Land 1776—1900
Walter Stiggins, et al.....Land 1777—1900
John Scarborough, et al.....Land 1778—1900
Nancy Cummins, et al.....Land 1779—1900

You are informed that on January 8, 1900, this office forwarded to the Commission to the Five Civilized Tribes, with instructions in like manner, similar petitions filed by you previous to January 8, 1900, as follows:—

Sallie Berryman, et al.....Land 57840—1899
Robert W. Jones, et al.....Land 58224—1899
W. W. Quillan, et al.....Land 58225—1899
Lou E. Smith, et al.....Land 58993—1899
S. D. Gaines, et al.....Land 59163—1899
Victoria Boyd, et al.....Land 61521—1899
Emma V. Biggs, et al.....Land 61523—1899
Emeline Cunningham, et al.....Land 61524—1899
J. M. Carter, et al.....Land 61525—1899
Elizabeth Fryar, et al.....Land 61526—1899
Lemuel Harris, et al.....Land 61528—1899
Margaret E. Hale, et al.....Land 61529—1899
John M. Jones, et al.....Land 61531—1899
Susan Jester, et al.....Land 61532—1899

Kate May, et al.....Land 61533—1899
Mary L. Merrifield, et al.....Land 61535—1899
Eliza Parks, et al.....Land 61536—1899
Fannie Patterson, et al.....Land 61537—1899
Nancy C. Pate, et al.....Land 61538—1899
John Scarborough, et al.....Land 61539—1899
Tilford Self, et al.....Land 61540—1899
Wm. C. Self, et al.....Land 61541—1899
R. E. Barron, et al.....Land 461—1900
A. J. Mann, et al.....Land 462—1900
Lucinda Hibdon, et al.....Land 463—1900

Very respectfully,

A. C. TONNER,
Assistant Commissioner.

C.F.H.—C.

99

EXHIBIT No. 3.

Roll No.	Name.	Age.	Sex.	Blood.
1327	Jim Gift.....	78	M.	½
1329	Sarah Gift.....	16	F.	¼
1328	Movella Gift.....	12	F.	¼
1330	Johnson Gift.....	22	M.	¼
1331	Effie Gift.....	1	F.	⅛
1332	Donnie Gift.....	21	F.	¼
1333	Maggie Mosely.....	24	F.	¼
1252	Annie Seals.....	19	F.	¼
	Henry Seals.			
1334	Emma Seals.....	36	F.	¼
1335	James Seals.....	19	M.	⅛
1336	Ara Seals.....	12	F.	⅛
1337	Kernell Seals.....	11	M.	⅛
	Caroline Seals.			
1338	Ada Seals.....	6	F.	⅛
1339	Talmage Seals.....	4	M.	⅛
	Mary Seals.			

EXHIBIT No. 4.

Chester Howe, Attorney-at-Law, 623 F St., N. W., Washington, D. C.

WASHINGTON, D. C., June 25, 1904.

Hon. Commissioner of Indian Affairs, Washington, D. C.

DEAR SIR:—I have the honor to enclose herewith, Brief and appearance in the matter of the application of Jim Gift et al., for identification as Mississippi Choctaws, the same being filed for such consideration as may be deemed proper by you.

I have the honor to be,
Respectfully, CHESTER HOWE.

100

EXHIBIT No. 5.

I.T.D. 7841—02,
1306—04,
11230—04.
L R S

DEPARTMENT OF THE INTERIOR,
WASHINGTON, November 23, 1904.

Commissioner of Indian Affairs.

SIR: Enclosed herewith is a communication addressed to the Commission to the Five Civilized Tribes, reversing its decision of October 10, 1902, in the Mississippi Choctaw Case of Jim Gift et al., and directing it to identify the applicants in said case as Mississippi Choctaws, in accordance with the recommendation of the Indian Office dated December 16, 1902, and November 2, 1904 (Land, 40407), respectively.

The record and papers in the case are also enclosed herewith.

Respectfully,
M. W. MILLER,
Assistant Secretary.

6 enclosures.

EXHIBIT No. 6.

Roll No.	Name.	Age.	Sex.	Blood.
225	Frank Johnson	40	M.	Full
21	Eliza Billy	33	F.	Full
56	Jacob Cooper	41	M.	Full
57	Julia Cooper	36	F.	Full
58	Foster Cooper	13	M.	Full
59	Janie Cooper	8	F.	Full
60	Susie Cooper	3	F.	Full
61	George Cooper	1	M.	Full
62	Alex Davis	22	M.	Full
1235	Jimmie Johnson	22	M.	Full
334	John Neal	53	M.	Full
303	Jeff D. Neal	28	M.	Full
304	Dora Neal	25	F.	Full
305	Cora Neal	2	F.	Full
306	Earnest Neal	1	M.	Full

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407	Nancey Neal	82	F.	Full
541	Martha Waiter	21	F.	Full
542	Robert Waiter	5	M.	Full
632	Richmond Billey	28	M.	Full
633	Martha Billey	25	F.	Full
634	Lizzie Billey	9	F.	Full
635	Harrison Billey	6	M.	Full
636	Sallie Billey	80	F.	Full
637	Dennis Sam	18	M.	Full

Roll No.	Name.	Age.	Sex.	Blood.
638	Acy Sam	16	F.	Full
1061	George Jeff	21	M.	Full
1062	Lula Jeff	19	F.	Full
1072	Wallace Henry	29	M.	Full
1073	Lillie Henry	—	F.	Full
1074	Josie Henry	2	M.	Full
1087	John Henry	67	M.	Full
1109	Oscar Billey	39	M.	Full
1110	Beauty Billey	27	F.	Full
1115	Sallie Dora Billey	2	F.	Full
1116	Emerson Billey	1	M.	Full
1164	Jim Postoak	48	M.	Full
1165	Mary Postoak	33	F.	Full
1166	Jim Brown Postoak	9	M.	Full
1327	Jim Gift	78	M.	½
1328	Movella Gift	12	F.	¼
1329	Sarah Gift	16	F.	¼
1330	Johnson Gift	22	M.	¼
1331	Effie Gift	1	F.	¼
1332	Donnie Gift	21	F.	¼
1333	Maggie Mosely	24	F.	¼
1334	Emma Seals	36	F.	¼
1335	James Seals	19	M.	⅛
1336	Ara Seals	12	F.	⅛
1337	Kernell Seals	11	M.	⅛
1338	Ada Seals	6	F.	⅛
1329	Talmage Seals	4	M.	⅛
1252	Annie Seals	19	F.	¼

102 *Second Amended Petition of Katie A. Howe, Ex'tx.*

Court Claims of the United States.

No. 29,821.

THE ESTATE OF CHARLES F. WINTON, Deceased, and Others,

v.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

Second Amended Petition in Behalf of the Estate of Chester Howe, Deceased.

Now comes Katie A. Howe, executrix of the last will and testament of Chester Howe, deceased, by her attorney, William W. Wright, and for her second amended petition respectfully shows:

In order that the original petition filed herein may conform to the record proof, it is alleged as follows:

1. That Chester Howe, deceased, was originally employed on and

in behalf of all resident Mississippi Choctaws, residing in the State of Mississippi (including those now appearing by name upon the final approved rolls of the Choctaw Nation) at their request and through their authorized representatives, by virtue of a certain power of attorney and general contract, set forth at length on page 927 et seq., of the printed record, and also by virtue of a certain "Band" contract referred to in the record testimony of the intervenor Walter S. Field.

103 *Intervening Petition of J. S. Bounds.*

The intervening petition of J. S. Bounds was filed by leave of Court August 25, 1908. Subsequently, to-wit, on Feb. 24, 1911, by leave of Court, an amendment was filed to the petition so that it now reads as follows:

In the Court of Claims.

No. 29,821.

The ESTATE OF CHARLES F. WINTON, Deceased, and Others,

vs.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

Intervening Petition as Amended of J. S. Bounds, Attorney in Fact for T. A. Bounds.

To the Honorable Chief Justice and Judges of the Court of Claims, respectfully represents:

First. That on May 29, 1908, the Congress of the United States by enactment provided in Section 27, of the Act approved on said date, as follows:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. S. Bounds, and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation and to render judgment thereon on the principle of *quantum meruit* in such amount or amounts as may appear equitable and justly due therefor, which judgment, if any, shall be paid from the funds now or hereafter due such Choctaws as individuals by the United States. The said William N. Vernon, J. S. Bounds and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of section nine of the Act of April twenty-six, nineteen hundred and six in behalf of the estate of Charles F. Winton, deceased: Provided, That the evidence of the intervenors shall be immediately submitted: And provided further, That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the

claims of said Winton and of the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment
104 of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the Governor of the Choctaw Nation, and the Attorney-General shall appear and defend the said suit on behalf of the said Choctaws."

Second. That your petitioner is a citizen of the United States and a resident of Walnut Springs, Texas, a lawyer by profession and a brother of T. A. Bounds, who is a citizen of the United States and a resident of Wortham, Texas; that by a certain power of attorney bearing date Feb. 22nd, 1908, the said T. A. Bounds made, constituted and appointed your petitioner, J. S. Bounds, attorney in fact for him, the said T. A. Bounds, to represent him in any and all matters pertaining to his claims against the Mississippi Choctaw Indians, the same being the subject matter of this petition; copy of said power of attorney being hereunto attached marked "Exhibit A" and made a part of this petition; that the said J. S. Bounds is the identical J. S. Bounds named in the act of Congress above mentioned.

Third. That T. A. Bounds in the matters herein set forth was an associate of Chester Howe named in said act.

Fourth. That T. A. Bounds is a native of the State of Mississippi and was familiar with the condition of the Mississippi Choctaw Indians residing in said State and, by reason of this familiarity of said Indians and his knowledge of the claims of said Indians and the decisions of the Department of the Interior relative to their rights, he entered into contracts with certain Mississippi Choctaw Indians in the month of April A. D. 1901, under which contracts he agreed to assist said Mississippi Choctaw Indians to secure their identification and enrollment in the Choctaw Nation in the Indian Territory, said contracts being first verbal agreements reduced to writings and bearing dates subsequent to said verbal agreements during the years 1901 and 1902.

105 Fifth. That the condition of the Mississippi Choctaws in Mississippi in April, 1901, and at all times prior to their removal from the Indian Territory was that of extreme poverty. They were tenants upon small tracts of land worked upon shares or division of crops with the landlord and, under the laws of Mississippi, it was a misdemeanor to secure or aid or abet the removal of a tenant during the term of his yearly contract without the payment of any indebtedness due the landlord. The rights of these people had not been determined but were dependent upon their identification by the officers of the government of the United States, who were acting through the Commission to the Five Civilized Tribes, commonly known as the Dawes Commission, and that said officers in the spring of 1901 held sessions at Meridian, Mississippi, for the purpose of hearing evidence relative to the identification of said Mississippi Choctaw Indians. That the Mississippi Choctaw Indians resided in several counties in Mississippi, oftentimes a long distance from Meridian, and were without money to pay for transportation or sustenance or that of their witnesses before said Commission, and the said Bounds, in their interest, on their behalf, and under his agreement, furnished these peo-

ple with provisions, money for railroad fare, necessary clothing, and all of the things necessary and proper to secure their identification and the preservation of their rights and expended therefor large sums of money aiding and assisting them by advice as well as the expenditure of money while said Commission was at Meridian, Mississippi, the names of the parties so furnished being given on a schedule hereunto attached marked "Exhibit B" and made a part hereof.

Sixth. That under the decision of the officers of the United States the rights of these Mississippi Choctaws could not be preserved without removal to the Indian Territory and the establishment of bona fide residence therein, and thereupon, the said T. A. Bounds advanced to said Indians necessary funds to remove from Mississippi to the Choctaw Nation, Indian Territory, and in compliance
106 with the laws of Mississippi, in many instances paid debts due the landlord, bought clothing necessary for the journey, paid the expenses of transportation from their homes to the city of Meridian, Mississippi, from which point a common railroad rate had been obtained, paid railroad fare and the costs of sustenance enroute, the salary and expenses of interpreter to accompany them, going himself at great expense and loss of time, furnishing medicine and medical attention where necessary and providing fully for said people, all of which acts were in the interests and for the benefit of said Indians, were accepted by them, and resulted in their obtaining valuable rights.

Seventh. That after entering into contracts with these Indians, T. A. Bounds came to the Choctaw Nation, Indian Territory, to ascertain where and in what manner lands and allotments could be obtained for the Mississippi Choctaws who were entitled to the same, and found that the good agricultural lands of the Choctaw Nation were nearly all held under a claim right of possession by persons who had placed improvements thereon, inclosed the same by fence or other evidences of title or claim; that each legal subdivision had been inspected by an officer under the Dawes Commission and described or listed under the name of the party claiming the same, and it was customary to transfer said improvements and the right of possession by Bills of Sale, and he further found that before lands could be allotted the applicant for allotment must show that he was the owner of the improvements or that no other person had a superior right to that of the applicant.

Eighth. It being apparent that these Indians would need shelter upon their arrival in the Indian Territory, he spent a large amount of time and considerable sums of money in traveling over the Choctaw-Chickasaw countries endeavoring to secure a location for the allotments of these people upon their arrival and purchased improvements to the value of about Five Thousand Dollars for them and in their interest for said purposes, commenced improvements
107 thereon for the purpose of securing their allotments, when on July 29, 1901, the Governors of the Choctaw and Chickasaw Nations filed complaint in equity in the United States Court for the Central District for the Indian Territory at McAlester and secured a temporary restraining order against the said T. A. Bounds and others

named in said petition, which suit was continued through several hearings to the month of November, 1901, at great expense to the said T. A. Bounds involving both the payment of money, attorney fees, and loss of time, together with incidental expenses, and was finally dismissed by the court, and that all of the expenses incurred were incurred in the defense of the rights of these Indians to participate in the lands and moneys of the Choctaw Nation, Indian Territory.

Ninth. That your petitioner has caused a list to be made of the names of the individuals and heads of families, (including the number in the family) of those Mississippi Choctaws who were actually allotted lands in the Choctaw-Chickasaw Nations by reason of the expenditures and efforts of petitioner; said list being attached hereto marked "Exhibit C" and prayed to be considered a part of this petition. Said list includes the expenses incurred in removal of said Indians and the expense of bringing them before the local Land Office in Indian Territory for the purpose of filing and selecting lands, and also supplies furnished and improvements purchased in their behalf.

Tenth. That thereafter during the year 1901 and up to and including spring of 1903, the said T. A. Bounds continued to furnish money, supplies, transportation, medical attendance and all necessary things, including teams, tools and feed to these Indians. That some of the parties with whom he had contracts and for whom the expenses for the identification had been advanced came to the Choctaw Nation with other persons than the said Bounds. And some of those whose expenses for removal were paid by the said
108 Bounds were induced by other persons to repudiate their contract and take lands at other places after they had accepted the expenditures made on their behalf by him; others received their full allotment but nearly all repudiated their contracts by failing to carry the same out either according to the letter or spirit thereof, and the amounts expended for which judgment is prayed in this petition aggregate about fifteen thousand dollars, as set forth in said schedule "C."

Eleventh. That the expedition of the said T. A. Bounds made in the interest of all of the said Indians that were not charged as individuals amount to Five Thousand Dollars.

Twelfth. That in securing allotments for these Indians the said T. A. Bounds expended on their behalf the costs, witness fees, attendance, and attorneys fees in such land cases as were necessary in defending and protecting their rights before the Land Office branch of the Dawes Commission. That he defended two or more cases in the U. S. District Court at McAlester other than the one above mentioned; and that he is entitled to remuneration for the time spent and energy used in securing and protecting the rights of these parties to their estates in the Choctaw Nation; and that the reasonable value of said service for time and money spent is Six Thousand Dollars.

Thirteenth. That none of the charges herein set forth have been paid; that the same are due and unpaid.

Fourteenth. That your petitioner believes the individual Mississippi Choctaws referred to in this petition are a portion of the Mississippi Choctaws sought to be made defendants under the original petition filed by the estate of Charles F. Winton in this case; that no person other than your petitioner is entitled to any priority of his payment or other relief over your petitioner for the reason that the lands so held were acquired with the money furnished by him
109 and are now the property of said individuals by reason of the expenditure of the money and the performance of the services as set forth herein, and that your petitioner, as he believes, has an equitable right of intervention in said suit, irrespective of the jurisdictional act set forth herein.

Wherefore, your petitioner prays:

First. That this petition may be filed and docketed as an intervening petition on case number 29,821 as referred to herein.

Second. That he may have judgment against the individuals named in the schedule attached and made part of this petition for the respective amounts expended upon their behalf, and that accounts carried in the names of families may be prorated among the members of said families.

Third. That he may have judgment for the services rendered, and that in equity the same shall be prorated between the individuals receiving the benefit thereof, and that interest may be allowed and computed from the date shown in the schedule at the rate of 6 per cent per annum for the cash expended and advanced; that the judgments shall be decreed a lien, as provided by the jurisdictional act; and for such other and further relief as to the court, in its wisdom, may seem just and equitable, and your petitioner will ever pray, etc.

J. S. BOUNDS, *Petitioner.*

HOWE & WRIGHT,
Attorneys for Petitioner.
W. S. FIELD,
Of Counsel.

110 STATE OF TEXAS,
County of Bosque, ss:

J. S. Bounds, being first duly sworn, on oath states that he has read the foregoing petition by him subscribed; that he is the petitioner named therein; that the facts stated in said petition as being of his knowledge are true, and the facts stated upon information and belief, he verily believes to be true.

J. S. BOUNDS.

Subscribed and sworn to before me this 18th day of August, 1908.

[SEAL.] J. W. MINGUS,
Notary Public.

My commission expires May 31, '09.

EXHIBIT "A."

STATE OF OKLAHOMA,
Pittsburg County, ss:

Know all men by these presents that I, T. A. Bounds, of Wortham, Freestone County, Texas, have made, constituted and appointed, and by these presents do make, constitute and appoint, J. S. Bounds, of Walnut Springs, Bosque County, Texas, my true and lawful Attorney in fact for me, and in my place to present, enforce and prosecute, in the departments of the United States Government, the Courts and the Congress if needed be, my claims against the United States and certain Mississippi Choctaw Indians, whose names, together with the accounts or amounts due are hereto attached (marked exhibit "A") and made a part hereof, for supplies furnished to and cash paid to and expenses for said Mississippi Choctaws; empowering him to verify all pleadings and documents properly used in connection therewith, and to receive the treasurer's draft or warrant that
111 may be issued in payment of said claim or claims, hereby giving to my said Attorney full power to revoke or to continue in force a certain power of Attorney heretofore given to one Arthur E. Wallace of Chicago, Illinois, for the same purposes herein mentioned, as my said Attorney herein mentioned may see fit in his discretion.

Giving and granting to my said Attorney, J. S. Bounds, by these presents, to have, use and take all lawful ways and means in my name for the purposes aforesaid, and generally to do all and everything, act or acts necessary to be done as fully and completely to all intents and purposes as I might or could do if personally present, hereby ratifying and confirming all that my said Attorney shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand at Kiowa, Oklahoma, this the 22nd day of February, A. D. 1908.

(Signed)

T. A. BOUNDS.

Before me the undersigned authority personally appeared, T. A. Bounds, of Wortham, Texas, known to me to be the person who executed the foregoing instrument, and named in the foregoing power of Attorney, who in my presence subscribed to and acknowledged the same to be his act and deed, and stated to me that he had executed the same for the purposes and consideration therein mentioned and expressed.

W. N. VERNON,
Notary Public, Pittsburg Co., Oklahoma.

112 AMENDED EXHIBIT "B".

List of enrolled Mississippi Choctaw Indians, carried before the Dawes Commission in Mississippi, showing amount expended per family and individual prior to identification, also expenses incident to identification, including sustenance and services.

Roll No.	Name.	Age.	Sex.	Blood.	
279	Boston, Lizzie	30	F.	Full	1
280	" Bennie	10	M.	"	2
281	" Dora	8	F.	"	3
152	Shoemaker, Jennie	28	F.	"	4
524	Foley, Betsie	48	F.	"	5
525	" Oscar	18	M.	"	6
260	Elix, Davis	32	M.	"	7
514	Lewis, John	51	M.	"	8
293	Smith, Thomas	22	M.	"	9
698	Thomas, John B.	25	M.	"	10
699	" Emma	35	F.	"	11
700	" Ada	7	F.	"	12
701	" Henry	1	M.	"	13
113					
601	John, Big	74	M.	Full	14
486	Tubbee, Columbus	21	M.	"	15
781	Simpson, Sam	55	M.	"	16
474	Johnson, Isaac	66	M.	"	17
475	" Susie	43	F.	"	18
476	" Sallie	18	F.	"	19
477	" Painey	8	F.	"	20
478	" Mattie	7	F.	"	21
1148	Lewis, Dan	22	M.	"	22
603	John, Charley	21	M.	"	23
614	Johnson, John P.	20	M.	"	24
333	Davis, Frank	20	M.	"	25
651	James, Wash	26	M.	"	26

487	Tubbee, Willis	46	M.	"	27
488	" Martha	42	F.	"	28
489	" Lucy	12	F.	"	29
490	" Ada	7	F.	"	30
997	Johnson, Wiley	21	M.	"	31
998	" Stella	16	F.	"	32
114					
1061	Jeff, George	21	M.	Full	33
999	Jackson, Willis	50	M.	"	34
1000	" Jameson	15	M.	"	35
1001	" Ida	13	F.	"	36
1002	" Albert	7	M.	"	37
1003	" Nixie	4	F.	"	38
1063	Willis, Tishomingo	54	M.	"	39
1283	Tonubbee, Lewis	17	M.	7/8	40
188	Billey, Ben	40	M.	full	41
1136	Tonubbee, Jackson	45	M.	"	42
1282	" Sissie	43	F.	3/4	43
1283	" Lewis	17	M.	7/8	44
1284	" Robert	14	M.	7/8	45
1285	" Murphy	10	M.	7/8	46
1286	" Lottie	4	F.	7/8	47
1138	Dixon, John	30	M.	full	48
1139	" Manie	20	F.	"	49
1140	" Ennie	2	F.	"	50
1034	Jackson, Nancy	65	F.	"	51
1035	" Bessie	6	F.	"	52
1036	" Patsey	9	F.	"	53
790	Lewis, Webb	20	M.	"	54
115					
151	Shoemaker, Jackson	48	M.	Full	55
152	" Jennie	28	F.	"	56
153	" Watson	7	M.	"	57
154	" Ernest	5	M.	"	58
155	" Manat	3	F.	"	59
156	" Ada	1	F.	"	60
157	" Rhoda	1	F.	"	61

572	Willis, John	59	M.	"	62
1145	McCormick, Sarah Jane	37	F.	"	63
142	" Hettie	9	F.	¾	64
143	" Lizzie	11	F.	⅞	65
332	Postoak, William	20	M.	full	66
191	Simmons, Leona (wife of Wm. Postoak)	16	F.	"	67
192	" Robert	9	M.	"	68
193	" Maggie	8	F.	"	69
194	" King	6	M.	"	70
195	" Pigfoot	3	M.	"	71
196	" Manie	1	F.	"	72
1133	Taylor, Henry	23	M.	"	73
1440	" Mollie	33	F.	"	74
1091	" Nettie	12	F.	"	75
1075	Taylor, Frank	21	M.	"	76
1076	" Lulie	—	F.	"	77
116					
515	Taylor, Larence	21	M.	Full	78

Total number of persons.....78

Expenses of identification as follows:

Sixteen families at $35.00 per family.....	$560.00
Eighteen individuals at $35.00 each.....	630.00

Services in identification as follows:

Seventy-eight Indians at $5.00 each.....	$390.00
Paid Hudson & Arnold for fourteen families at $50.00 per family	700.00
Paid Hudson & Arnold for eighteen individuals at $50.00 each	900.00
Total expense	$3,180.00

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AMENDED EXHIBIT "C."

List of persons named in Amended Exhibit "B" who were brought to Indian Territory and allotted by the petitioner; the specific itemized accounts with each family being set forth in exhibit "C" of the original petition.

Roll No.	Name.	Age.	Sex.	Blood.	
928	Taylor, Will	26	M.	"	1
929	" Jennie	38	F.	"	2
930	" Elizabeth	3	F.	"	3
931	" Johnson	2	M.	"	4
932	Jeff, Alice	11	F.	"	5
332	Postoak, William	20	M.	"	6
191	Simmons, Leona (wife of Wm. Postoak)	16	F.	"	7
192	" Robert	9	M.	"	8
193	" Maggie	8	F.	"	9
194	" King	6	M.	"	10
1133	Taylor, Henry	23	M.	"	11
1440	" Mollie	33	F.	"	12
1091	" Nettie	12	F.	"	13
1075	Taylor, Frank	21	M.	"	14
1076	" Lulie	—	F.	"	15
790	Lewis, Web	20	M.	"	16
	Lewis, Mary (four persons enrolled under this name).				17

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151	Shoemaker, Jackson	48	M.	Full	18
152	" Jennie (wife)	28	F.	"	19
153	" Watson	7	M.	"	20
154	" Ernest	5	M.	"	21
155	" Manat	3	M.	"	22
156	" Ada	1	F.	"	23
157	" Rhoda	1	F.	"	24
1136	Tonubby, Jackson	45	M.	"	25
1282	" Sissie	43	F.	3/4	26
1283	" Lewis	17	M.	7/8	27
1284	" Robert	14	M.	7/8	28
1285	" Murphy	10	M.	7/8	29
1286	" Lottie	4	F.	7/8	30
515	Taylor, Larence	21	M.	full	31

188	Billie, Ben	40	M.	"	32
1121	Thomas, Silman	10	F.	"	33
1122	" Beckey	6	F.	"	34
1138	Dixon, John	30	M.	"	35
572	Willis, John	59	M.	"	36
1034	Jackson, Nancy	65	F.	"	37
1035	" Bessie	6	F.	"	38
1036	" Patsy	9	F.	"	39
119					
1145	McCormick, Sarah Jane	37	F.	Full	40
142	" Hettie	9	F.	3/4	41
143	" Lizzie	11	F.	7/8	42
698	Thomas, John B.	25	M.	Full	43
1063	Willis, Tishomingo	54	M.	"	44
999	Jackson, Willis	50	M.	"	45
1000	" Jameson	15	M.	"	46
1001	" Ada	13	F.	"	47
1002	" Albert	7	M.	"	48
1003	" Nixie	4	F.	"	49
14	Taylor, Stanley	5	M.	"	50
13	" Lem	10	M.	"	51

120 CITY OF WASHINGTON,
District of Columbia, ss:

I, William W. Wright, being first duly sworn, upon oath depose and say:

I am a member of the firm of Howe & Wright, the attorneys named in the foregoing and annexed petition. On the 24th day of August, 1908, I served notice upon the Governor of the Choctaw Nation of the foregoing suit by mailing a true copy of said petition, by registered mail, addressed to Green McCurtain, present Governor of the Choctaw Nation, addressed to him at McCurtain, Oklahoma.

WILLIAM W. WRIGHT.

Subscribed and sworn to before me this 24th day of August, 1908.

S. A. TERRY,
Notary Public.

[SEAL.]

The original intervening petition of J. J. Beckham was filed by leave of Court on April 9, 1909. Subsequently, to-wit, by leave of Court, an amendment was filed to said petition so that it now reads as follows:

In the Court of Claims.

No. 29821.

The ESTATE OF CHARLES F. WINTON, Deceased, and Others,

vs.

JACK AMOS and Others, Known as The "Mississippi Choctaws."

Intervening Petition of J. J. Beckham.

To the Honorable Chief Justice and Judges of the Court of Claims, your petitioner respectfully represents:

1. That he is a citizeen of the United States, residing at Mexia, Texas, and that he files this petition in his own right as hereinafter set forth.

2. Under the provisions of Section 27 of the Act of Congress of May 29, 1908 (Public 156), the following was authorized.

"Sec. 27. That the Court of Claims is hereby authorized and directed to hear, consider and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. S. Bounds and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable and justly due therefor, which judgment, if any, shall be paid from the funds now or hereafter due such Choctaws as individuals by the United States. The said William N. Vernon, J. S. Bounds and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of Section nine of the Act of April twenty-six,
122 nineteen hundred and six, in behalf of the estates of Charles F. Winton, deceased: Provided, That the evidence of the intervenors shall be immediately submitted: And Provided, further, That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claims of the said Winton and the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the Governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws."

3. That your petitioner was an associate of J. S. Bounds, the identical person mentioned in said act, and also one T. A. Bounds mentioned in the petition filed in the above case by J. S. Bounds; also an associate of William N. Vernon, the identical person named in said act.

4. Your petitioner was familiar with the condition of the Choctaw Indian residing in the State of Mississippi and, by reason of his familiarity of said Indians and his knowledge of the claims of said Indians and the decisions of the Department of the Interior relative to their rights, he entered into contracts with certain Mississippi Choctaw Indians, under which he agreed to assist said Mississippi Choctaw Indians to secure their identification and enrollment in the Choctaw Nation in the Indian Territory, said contracts being first verbal agreement reduced to writing and bearing dates subsequent to said verbal agreements.

5. That the condition of the Choctaw Indians who were parties to the contracts made with your petitioner in 1901 and later dates was that of extreme poverty. They were without money or means from which money could be derived to pay for transportation from Mississippi to the Choctaw Nation, or to buy food or clothing
123 necessary to sustain and clothe themselves and their families. after their arrival in the nation; and the contracts made by your petitioner were each and every one made in good faith for the purpose of aiding and the carrying out of the law and protection of the contracting Indians. That these people were tenants in Mississippi, and under the laws of that State, it was a misdemeanor to secure the removal of persons situate as they were without the payment of any amounts due the landlord and that they were so indebted in various amounts which were necessarily paid prior to this removal.

6. That under the provisions of Sections 41, 42, 43 and 44 of the act of Congress of July 1, 1902, the Mississippi Choctaws residing in Mississippi who were included within the terms of said act were obliged to move to the Choctaw Nation within six months from the date of their identification or lose their estates in said Nation, and in compliance with the terms of his contract your petitioner moved from the State of Mississippi to the Choctaw Nation, Indian Territory, about 16 Choctaw Indians, the names of whom are hereunto attached upon a schedule marked "Exhibit A," and made a part of this petition. That in moving said Indians your petitioner paid all of the expenses, which included the costs for travel from their former homes to the railway station in Mississippi, railroad fare from their nearest station to Meridian, Mississippi, from which point a common rate of railroad fare to points in the Indian Territory had been obtained, railroad fare from Meridian, Mississippi, to Kiowa and Atoka, Indian Territory (now Oklahoma), sustenance enroute, and incidental expenses, including clothing, medicines and care, and including the expenses of an interpreter and a man to look after the wants of these people while traveling; that after arriving in Kiowa, Indian Territory, now Oklahoma, your petitioner provided houses, food, necessary furniture and other things for the Mississippi

Choctaws so moved, and purchased rights of possession to lands on some of which houses had theretofore been erected, including
124 fences and other improvements and on others of which houses and other improvements were afterwards erected, all at the expense of your petitioner, and that your petitioner furnished or caused to be furnished, general supplies consisting of food, clothing and household necessities to said Mississippi Choctaw Indians and the necessary money to permit said Indians to appear before the Dawes Commission and make proof of their establishment of residence in Indian Territory, together with their witnesses who were required to so appear, and assisted the Indians in allotting the lands so purchased by furnishing money to defray expenses to land office and resurvey by him under his contracts, and purchased for them wagons, teams, plows and agricultural implements, in some cases breaking the lands to the end that the Indians might become self-sustaining and the policy of government be carried out, furnishing seed where needed and paying for medical attendance for such parties when sick, and the funeral expenses for those who died.

7. Your petitioner purchased improvements in the Indian Territory for a number of Choctaw Indians which he moved in order that they might be able to file upon valuable and desirable land, a list of said Indians and the amount expended for each individual for improvements being hereto attached and referred to as Exhibit B.

8. That by reason of your petitioner's expenditures of money in purchasing valuable lands and improvements subsequently allotted to these Mississippi Choctaws, now in their possession and on which many of them reside, and by reason of his business ability exercised on their behalf and in their interest, said Mississippi Choctaws now have allotments of much greater value than the ordinary Mississippi Choctaw allotments; exceeding in value many thousands of dollars either the appraised value of allotment or the average value of the Mississippi Choctaw allotment and that the estate so obtained is directly due to the money furnished, the judgment exercised by your petitioner under his contract.

125 9. That your petitioner entered into written contracts with the individual Mississippi Choctaw Indians whom he moved and the amount provided for in said contract as a contingent fee for the services performed thereunder should be considered in computing the amount due petitioner for his services upon the basis of quantum meruit, together with the actual expenditures made on account of and in behalf of said individual Mississippi Choctaws which aggregate, approximately, six thousand dollars, all of which will be more particularly shown in the proof taken in support of this petition.

10. That none of the sums of money heretofore mentioned have been paid or refunded by the Mississippi Choctaw Indians, that none of them are entitled to credits, except such as appear on the schedule of account attached to this petition; that the sums were expended and accepted under contract which the said Mississippi Choctaw Indians as individuals have repudiated by act, and by failure to comply with the terms thereof, and your petitioner has at all times acted in good faith, in strict compliance with what he believed, and now believes to be the law and in justice to the defendants individuals.

11. That your petitioner is informed and believes the individuals named in the schedule made a part of this petition are a portion of the Mississippi Choctaws from whom the petitioner, the estate of Charles F. Winton, and other intruenors seek a recovery in the original petition filed in this case. That your petitioner is entitled for the reason set forth herein to a lien on the lands and money belonging to the individuals so named prior to any other person or persons whomsoever, for the reason that the lands so held were acquired with the money furnished by him are now the property of said individuals by reason of the expenditures of the money and the performance of the services as set forth herein, and that your petitioner, as he believes, has an equitable right of intervention in said suit, irrespective of the jurisdictional act set forth herein.

126 *Prayers.*

Wherefore, Your petitioner prays:

First. That this petition may be filed and docketed as an intervening petition on case number 29,281 as referred to herein.

Second. That he may have judgment against the individuals named in the schedule attached and made part of this petition for the respective amounts expended upon their behalf, and that accounts carried in the names of families may be prorated among the members of said families.

Third. That he may have judgment for the services rendered, and that in equity the same shall be prorated between the individuals receiving the benefit thereof, and that interest may be allowed and computed from the dates shown in the schedule at the rate of 6 per cent per annum for the cash expended and advanced; that the judgments shall be decreed a lien, as provided by the jurisdictional act and for such other and further relief as to the court, in its wisdom, may seem just and equitable, and your petitioner will ever pray, etc.

J. J. BECKHAM,
Petitioner.

WILLIAM W. WRIGHT,
Attorney for Petitioner.

STATE OF TEXAS,
County of Limestone, ss:

J. J. Beckham, being duly sworn, on oath states that he has read the foregoing petition by him subscribed; that he is the petitioner named therein; that the facts stated in said petition as being of his knowledge are true and the facts stated upon information and belief he verily believes to be true.

SANDFORD SMITH.

Subscribed and sworn to before me this 5th day of April, 1909.

127 CITY OF WASHINGTON,
District of Columbia, ss:

I, William W. Wright, being first duly sworn, upon oath depose and say: On the 8th day of April, 1909, I served notice upon the Governor of the Choctaw Nation of the foregoing suit by mailing a true copy of said petition, by registered mail, addressed to Green McCurtain, present Governor of the Choctaw Nation, addressed to him at McCurtain, Oklahoma.

WILLIAM W. WRIGHT.

Subscribed and sworn to before me this 8th day of April, 1909.
[SEAL.]
S. A. TERRY,
Notary Public.

128 AMENDED EXHIBIT "A."

This Schedule shows a list of the Indians brought to Indian Territory from Mississippi by J. J. Beckham and R. J. Ellington, and who were finally enrolled.

Roll No.	Name.	Age.	Sex.	Blood.
617	Sallie Dixon	58	F.	Full
618	Bettie Martin	13	F.	"
294	Bob Barcus	23	M.	"
782	Wes Amos	62	M.	"
783	Lissa Amos	58	F.	"
784	Jasper Amos	20	M.	"
785	Dora Amos	19	F.	"
786	Cleveland Amos	17	M.	"
787	Bennett Amos	14	M.	"
1362	Arden Jamison	23	M.	"
1315	Sanders Barcus	25	M.	"

EXHIBIT B.

ATOKA, I. T., Dec. 23, 1903.

Choctaw Indians.
To amt. paid out for improvements by J. J. Beckham.

Dec. 23, 1901,	Paid	C. P. Standley	$ 100.00
" 23, 1901,	"	J. W. McLendon	760.00
Jan. 23, 1902,	"	Joseph Dupire	105.00
" 24, 1902,	"	W. Bassett	400.00
" 24, 1902,	"	Sam Downing	150.00
" 24, 1902,	"	W. England wk	10.00
" 24, 1902,	"	J. R. Lynch "	12.50
" 24, 1902,	"	For paste and wire	75.00
			$1,612.50

129–134 EXHIBIT C.

This Schedule gives a list of Indians identified before the Dawes Commission in Mississippi, through the efforts of Petitioner and R. J. Ellington, although not removed to the Indian Territory by them.

List of Indians Identified in Mississippi in Exhibit "C" of Ellington Deposition, Who Were Subsequently Enrolled.

Roll No.	Name.	Age.	Sex.	Blood.
505	Pickens York	29	M.	Full
506	Nannie York	10	F.	"
993	Amos York	22	M.	"
994	Bettie Lee York	2	F.	"
673	Salmon Sockey	60	M.	"
674	Phoebe Sockey	58	F.	"
675	Mary Sockey	13	F.	"
163	Will Sockey	22	M.	"
1108	Rafe Sockey	24	M.	"
273	William Billy	28	M.	"
583	Sam Billy	34	M.	"
87	Robert Sweeny	26	M.	"
88	Ara Ann Sweeny	23	F.	"
89	Joseph Sweeny	2	M.	"
90	Frank Sweeny	1	M.	"

135 *Intervening Petition of Madison M. Lindley.*

Filed by Leave of Court, May 7, 1909.

In the Court of Claims.

No. 29,821.

The ESTATE OF CHARLES F. WINTON and Others,

vs.

JACK AMOS and Others.

Intervening Petition of Madison M. Lindley.

To the Honorable the Chief Justice and Associate Justices of Said Court, Your petitioner respectfully represents:

1. That he is a citizen of the United States, residing at McAlester, in the County of Pittsburg, State of Oklahoma, and files this suit in his own right.

2. That set forth in the petitions filed in this Court by the Estate of Charles F. Winton, and by Chester Howe, jurisdiction has been conferred upon this Court by Congress to adjudicate the claims of

said Howe, Winton and others, and their associates and as-
136 signs for services rendered and expenses incurred in connection with the settlement of the claims of the Mississippi Choctaw Indians to citizenship in the Choctaw Nation.

3. That your petitioner was employed in the prosecution of said claims as the associate of said Chester Howe, and in the course of such employment he rendered certain legal services and spent the sum of $200.00.

Wherefore petitioner prays that he may become a party plaintiff in said suit by intervention, and that after due proof has been filed, he may had judgment against said defendants for the amounts so advanced as expenses, and for the reasonable value of the services rendered by him, as provided in said Acts of Congress.

MADISON M. LINDLEY,
By WM. E. RICHARDSON, *Attorney in Fact.*
RALSTON, SIDDONS & RICHARDSON,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, ss:

William E. Richardson, being first duly sworn, on oath deposes and says that he is attorney in fact for the above petitioner, and as such has subscribed the same; that the facts therein stated are true to the best of his knowledge, information and belief.

WM. E. RICHARDSON.

137 Subscribed and sworn to before me this 5th day of May, 1909.

HARVEY E. WINFIELD,
Notary Public, D. C.

138 *Intervening Petition of M. M. Lindly and His Associates.*

Filed by Leave of Court, May 17, 1909.

In the Court of Claims.

No. 29,821.

The ESTATE OF CHARLES F. WINTON, Deceased, et al.,

vs.

JACK AMOS and Others, known as the "Mississippi Choctaws."

Intervening Petition of M. M. Lindly and His Associates.

YOUR petitioner respectfully represents:

That he is a citizen of the United States and under the provision of the act of Congress of April 26, 1906, conferring jurisdiction to

the above action upon the Court of Claims as amended by the act of May 29, 1908, he files this petition in his own right and as an associate of Chester Howe and on behalf of those associated with him and with the said Chester Howe as hereinafter set froth.

That by act of Congress approved June 10, 1896, the commission known as the Dawes Commission created by virtue of an act of Congress approved March 13, 1893, was directed among other things to make, with a view of ultimate allotment, a complete roll of citizenship of the Choctaw Nation in the then Indian Territory, now Oklahoma.

139 That many of the Choctaw Indians to whom the lands occupied by the Choctaw Nation in Indian Territory had been granted by the United States were at that time not yet removed to said land, some of them being too poor to remove had remained in the States east of the Mississippi River, while others seeking more civilized communities than Indian Territory, lived in the States bordering on said land.

That relying upon the treaty made by the United States with the Choctaw Indians and proclaimed February 21st, 1831, and particularly upon the provision of section 2 of said treaty as well as upon the Letters Patent conveying said land, your petitioner under authority conferred upon him by contract with the organized bands of said Indians in Mississippi, as well as by individual contracts with many of those Indians who lived outside of Indian Territory, did appear on many occasions before the said Commission on behalf of many of said non-resident Indians afterward known as Mississippi Choctaws, and there urge the right of these Choctaws to be enrolled upon said citizenship rolls of said nation with the view of finally participating in the allotment of said land and the distribution of the estate of said nation. That under the law then in force he presented fully the questions there involved and upon the refusal of said Commission to hear and determine the rights of said people, he and his associates presented the matter to the United States District Courts for Indian Territory.

That at the sitting of said court at South McAlester, Indian Territory, during the year 1893 and again in the beginning of the year 1897, in an elaborate argument covering several days he

140 fully presented the questions there involved. That at about the same time the firm of Cruce & Cruce, of Ardmore, and Walter S. Field, then of Oklahoma City, attorneys, presented to the United States District Court sitting at Ardmore the same question in like manner. That about the same time Robert L. Owen, for Charles F. Winton, deceased, presented to the United States District Court sitting at Muskogee, the same question in like manner. That upon the final determination by said courts following said argument the court at South McAlester and at Muskogee held adversely to the rights of non-resident Choctaw Indians, while the court at Ardmore, being a court of concurrent jurisdiction in said Choctaw Nation, held that they were entitled to all the rights and privileges of other Choctaw Indians, notwithstanding the fact that they did not reside within the limits of said nation. That at this time he was associated

with and consulted freely with said Walter S. Field, of Oklahoma City, and that from this time on they co-operated in their efforts to secure recognition by the proper authorities of the rights of these Mississippi Choctaws.

That during the winter of 1896 and the spring of 1897 your petitioner, the said W. S. Field, and the firm of Crowe & Crowe, as well as one J. O. Pool, of Whitesboro, Texas, so persistently urged upon the said Dawes Commission the rights of nonresident Choctaw Indians under the treaty of 1830 as interpreted by the said Federal court at Ardmore that the said Commission finally assured your petitioner that it would recommend to Congress some legislation that, if enacted, would authorize said Commission to make an investigation of the rights of these people. That during the same winter
141 your petitioner and his said associates called to the attention of the President of the United States the deplorable condition of these people still living in Mississippi, while under existing treaties they should be possessed of valuable lands in Indian Territory and urged upon him the necessity for a proper protection of their rights. That the matter at the same time was, by order of the President, presented to the Commissioner of Indian Affairs, and to the Secretary of the Interior. That as a result of such agitation the Interior Department did recommend to Congress that the said Commission be authorized to make an investigation of the rights of these people and therefore Congress provided in the Indian appropriation bill of June 7, 1897, for such investigation.

That thereafter your petitioner and his said associates, as well as Charles F. Winton and his associates, again appeared repeatedly before the said Commission at its various sittings presenting the various phases of the Mississippi Choctaw question and insisting upon and urging that justice and equity be done these unfortunate people. And in the following winter the said Commission reported to Congress that these Mississippi Choctaws had a right to remove at any time to the Choctaw Nation, and thereupon acquire all the rights of other Choctaw citizens, but that as the time for making applications to said Commission for enrollment had expired it would, if these rights were to be preserved, be necessary to extend by act of Congress the time for making such applications.

That while the act of June 28, 1898, known as the Curtis act, was under consideration your petitioner prepared and sub-
142 mitted to each member of the House and Senate Indian Committee an argument fully setting forth the claims of these people and representing that unless some explicit provision was made for their protection their rights would be barred. That while no authority to allot land to these people was by this act conferred upon the Commission, yet the act contained sufficient recognition of their rights to, in a measure, protect them.

That thereafter the said Dawes Commission still refused to enroll or to make any record of the offer of applications made by any of said Mississippi Choctaws notwithstanding the fact was shown that many of them had removed to Indian Territory and were then bona fide residents of the Choctaw Nation.

That on the — day of July, 1898, your petitioner, for the purpose of more efficiently protecting the interests of his clients and properly presenting said question to the Commissioner of Indian Affairs, the Secretary of the Interior, the Attorney General, and, if need be, to the members and committees of Congress, by virtue of the authority contained in his contract with the various organizations and individuals, did enter into an agreement in writing with the said W. S. Field and Chester Howe, both then of Washington, D. C., a copy of which contract is hereinto attached, marked Exhibit A and made a part hereof.

That thereafter throughout all the vicissitudes of Departmental and Congressional action connected herewith, he and his associates appeared before said Dawes Commission at numerous places, before the Commissioner of Indian Affairs, the Secretary of the Interior, the Attorney-General, individual members of Congress and the committees thereof presenting by oral and by written arguments
143 and by petitions the rights and equities of these people in and to a share in said estate and everywhere urged such action as would fully protect them and all of them.

That under the provision of the contract heretofore set forth between your petitioner and Chester Howe and W. S. Field it was agreed that the said petitioner, upon his own responsibility, should employ such assistance as should become necessary in the preparation of papers, the taking of testimony, and in the performance of such other work as should be required for the purpose of properly protecting the rights and interests of these people in Indian Territory, in Mississippi, and in the neighboring States wherever resident.

That pursuant to said agreement and for the purposes above set forth he employed L. P. Hudson, James E. Arnold and Woodson Arnold, the said J. E. Arnold and L. P. Hudson operating under the firm of Hudson & Arnold. Under the terms of his agreements with said parties they were to take charge of the work connected with the making of contracts, the preparation of applications, petitions and testimony, the removal to Indian Territory and the selection of allotments by said Indians not resident in Indian Territory, and were to collect from those persons able to pay a retainer fee, such sums as appeared to be just and reasonable under all the circumstances, transmitting immediately to your petitioner the said applications, petitions, testimony and the contracts so taken, together with all money so collected.

That many of these people then claiming the rights of Choctaws were part blood Indians in fair financial circumstances, some of whom, encouraged by the prospects of final enrollment, had,
144 after the act of 1896 and prior to the final act under which the full bloods were awarded their rights, removed to Indian Territory. Many of these people were able to and did pay to the said Hudson and Arnold for the benefit of your petitioner and his associates liberal retainer fees and compensation which amounted in the aggregate to a large sum.

That your petitioner, together with his associates in the city of Washington, were to urge such action on the part of the Commis-

sioner and the Interior Department as would protect the interests of these people and in case of failure to accomplish the desired result in this manner they were to appear before the members of Congress and the committees thereof and there urge such legislation as would authorize and direct the Department of the Interior to properly protect the rights of these Mississippi Choctaws, whether then resident in Indian Territory or elsewhere, and were to present the said petitions, individual applications and testimony, to the said Commissioner and other proper officers to the end that the individual applicants be finally enrolled and allotted as other Choctaws.

That for the purpose of further securing efficient service in said matter the said Chester Howe employed Samuel Powell, of Wagner, Oklahoma, to aid him in the performance of his part of said contract, and that pursuant to such employment the said Samuel Powell appeared before members of Congress and committees thereof in the interest of these people.

That pursuant to such contract the said Hudson and Arnold and the said Woodson Arnold prepared petitions and testimony for and took contracts with a large number of individual Mississippi Choctaw Indians and collected pursuant to such contract a sum
145 of money in excess of $15,000, and that your petitioner and his associates have at all times under the terms of said contracts faithfully and efficiently represented the interests of those persons so contracted with.

That the number of individual Mississippi Choctaw Indians represented by your petitioner and his associates and who were subsequently enrolled and allotted numbered more than six hundred, while a great majority of the remainder of these persons enrolled and allotted were represented by them through their employment as attorneys for the bands or towns to which the said Indians belonged, and all of said allotted persons profited by the services of your petitioner and his associates in that the said services contributed materially to the final success of their struggle for allotment.

That upon the final passage of the act authorizing the removal to Indian Territory and the enrollment of these people the said Hudson and Arnold, pursuant to the employment heretofore made by your petitioner proceeded to the State of Mississippi and there appeared before the said Commission with the various applicants for identification and took charge of them at the hearing to the end that their status and rights as Mississippi Choctaws might be and were properly and fully presented for consideration.

That all of the persons nonresident in Indian Territory in 1898 presented to and enrolled by the Commission under the provisions finally enacted by Congress were full blood Indians, indigent and in debt and totally unable to bear any portion of the expense of such presentation or to remove themselves to Indian Territory, and that in the matter of procuring the attendance of these parties and
146 their witnesses at their special request this petitioner and his associates through the said Hudson and Arnold necessarily expended large amounts of money. That thereafter, in order that the rights of these Indians might be fully protected, your petitioner

and his associates at the request of said Indians paid for them their indebtedness in Mississippi so that they might remove from the State without hindrance, procured for them necessary food and clothing, and transferred them to and maintained them in Indian Territory until they were finally enrolled and allotted and had become self supporting.

That in the performance of these services they necessarily expended large amounts of money as is fully set forth in the accounts rendered in the petitions and evidence of the said J. E. Arnold and L. P. Hudson and Woodson Arnold.

Your petitioner further shows that in the proper performance of the services hereinbefore set forth

removal, and that thereafter to further carry on the said work your petitioner and his said associates, through the said Chester Howe and J. E. Arnold, borrowed from various persons large sums of money which were also properly and necessarily expended in the removal, allotment and support of these people to the end that they might comply with the terms of the law providing for their allotment.

That the sum hereinbefore set forth as having been collected as fees by the said Hudson and Arnold and Woodson Arnold, and being the funds of the said petitioner and his associates under the terms of the contract between them and by the terms of the employment of the said Hudson and Arnold and Woodson Arnold, was all expended properly and necessarily in the matter of said identification and he and his associates expended large sums of money in the necessary expense of traveling to and from the city of Washington and maintaining themselves therein. That they further necessarily spent large sums of money in traveling expenses in the performance of said services within the Indian Territory and to and from the State of Mississippi.

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Your petitioner further represents that as the result of the services so rendered by him and his said associates as hereinbefore set forth and in conjunction with the like services in said matter rendered by Charles F. Winton and his associates, each and every of those Indians now known as Mississippi Choctaws who have been identified and duly enrolled and allotted by the Commission to the Five Civilized Tribes have become possessed of an estate worth in excess of $5,000, and that your petitioner and his associates have spent a great portion of their time without compensation and at great expense for a period of more than fourteen years in the accomplishment of this result. That your petitioner and his associates representing as hereinbefore set forth the entire body of Mississippi Choctaws are entitled to be compensated for their services out of the estates so obtained in what was formerly Indian Territory, now Oklahoma, for each and every such Choctaw Indian finally enrolled and allotted in the Choctaw Nation. That in computing such compensation consideration should be given to the financial condition of these people prior to such allotment and the said computation made upon the basis of a contingent fee.

Your petitioner further shows that under and by virtue of the

individual contracts entered into by the individual Missis-
148 sippi Choctaws with him and his associates they are entitled to further compensation for the specific services rendered to each of said individuals in the procurement of his identification, his removal to Indian Territory and his final allotment together with all of the expenses attendant thereto, as well as upon his maintenance and support thereafter. That your petitioners are entitled to have this compensation computed upon the basis of a contingent contract in view of the fact that the same must necessarily be payable out of the estate procured for these individuals who were, prior to the obtaining of such an estate, in indigent circumstances.

Wherefore, your petitioner prays that he and his associates and his employees may have judgment for the value of their services rendered herein together with their expenses incurred in the rendition of such services, together with all disbursements made by them as hereinbefore set forth with interest thereon from the time each of said items became due and payable. Your petitioner further prays that the amount found due him and his associates may be properly proportioned under the contract heretofore entered into between themselves, and that separate judgment be rendered therefor as well as for the services shown by the testimony to have been rendered by those persons employed by your petitioner and that similar provision be made for the payment of persons shown to have been associated with your petitioner other than those connected with him by contract and that the amounts of money, together with interest thereon borrowed by your petitioner and his associates and employees be separately ascertained and that individual judgments be ren-
149 dered in favor of the persons from whom such money was borrowed together with legal interest from the date of said loan.

M. M. LINDLEY.

L. A. PRADT,
Attorney for Petitioner.
RALSTON, SIDDONS & RICHARDSON,
Of Counsel.

150 STATE OF OKLAHOMA,
Pittsburg County, ss:

M. M. Lindly being duly sworn says that he is petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated upon information and belief and as to those matters he believes it to be true.

M. M. LINDLY.

Subscribed and sworn to before me this 12th day of May, 1909.

F. D. UNGLES,
Notary Public.

My commission expires Oct. 2, 1912.

151 "EXHIBIT A."

This contract made and entered into this — day of July, 1898, by and between M. M. Lindly, of South McAlester, Indian Territory, and Walter S. Field and Chester Howe, of Washington, D. C.

Witnesseth, That whereas the said M. M. Lindly holds contracts and powers of attorney from various individual nonresident Choctaw Indians and from the bands and organizations of said nonresidet Choctaws residing in Mississippi and known as Mississippi Choctaws as well as from various individual Mississippi Choctaws residing in Indian Territory who are entitled under the various treaties to share in the lands and funds of the Choctaw Nation, in Indian Territory, and the said Lindly being desirous of securing the assistance of the said Field and Howe in procuring such action on the part of the United States as will result in the establishment of the right of said Indians to share in the property of said Choctaw Nation, it is agreed that he said Lindly shall assign to each of said Field and Howe the one-fourth part of each and every of his said contracts, and that he, the said Lindly, will employ such assistance as shall be necessary to properly prepare the petitions and papers of said persons and to take new contracts with such other persons as may desire to employ the said parties to present and prosecute their claims to Choctaw citizenship. And the said Lindly further agrees to properly present by himself or through his employees all cases coming hereunder to the Dawes Commission and to account to the said Walter S. Field and Chester Howe for all money collected hereunder remitting to each of them the one-fourth part thereof, and the said Walter
152-240 S. Field and Chester Howe hereby agree that they will present the cause of said Mississippi and nonresident Choctaws to the proper authorities to the end that appropriate legislation and Departmental action protecting the rights of said Indians in and to the property of said Choctaw Nation may be secured.

M. M. LINDLY.
WALTER S. FIELD.
CHESTER HOWE.

241 *Intervening Petition of W. S. Fields and His Associates.*

Filed by leave of Court June 9, 1910.

In the Court of Claims.

No. 29,821.

THE ESTATE OF CHARLES F. WINTON, Deceased, et al.,

vs.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

Intervening Petition of W. S. Field and His Associates.

Your petitioner respectfully represents:

That he is a citizen of the United States, resident of the District of Columbia, and that under the provision of the Act of Congress, approved April 26, 1906, (34 Stat. L. 137,140), as amended by the act of May 29, 1908, (35 Stat. 444,457), conferring jurisdiction in the above entitled cause upon this Court, he files this petition in his own right and as an associate of M. M. Lindly, Chester Howe and others, parties to a certain contract, and whose rights were clearly defined therein, and which contract was made pursuant to authority conferred upon M. M. Lindly, under and by virtue of an agreement entered into by and between said Lindly, an attorney at law of McAlester, Oklahoma, and the Choctaw Tribe of Indians, residing in the State of Mississippi, acting through the representatives
242 of its three bands, and which three bands comprised all those Indians known as "Mississippi Choctaws," residing in the State of Mississippi, and which agreement is hereinafter more fully set forth and described.

By act of Congress approved June 10, 1896, authority was conferred upon a legislative commission, known as the Dawes Commission, to prepare rolls of members of the Choctaw and Chickasaw tribes, preparatory to the division in severalty of the property theretofore and then held in common by the Choctaw and Chickasaw Nations; that immediately upon the enactment of said legislation a controversy arose as to the rights of those Choctaw Indians, residing in the State of Mississippi and known as "Mississippi Choctaws," to share in said property. At the solicitation of representatives of the three bands of Choctaw Indians, known as "Mississippi Choctaws," and resident in the State of Mississippi, said Lindly sent to the State of Mississippi an agent or agents to negotiate with the representatives of said three bands of "Mississippi Choctaws" to represent the "Mississippi Choctaws" before said Commission, the Courts and Congress of the United States in the prosecution of their claim to individual shares of said common property; that during the month of December, 1896, said agent or agents of said Lindly met the representatives of the said three bands of "Mississippi Choctaws," in Mississippi, and

drafted an agreement with said representatives, by the terms and provisions of which the said Lindly was authorized to prosecute the claims of all "Mississippi Choctaws" before said Commission, the Courts and the Congress of the United States to individual shares in said common property for a fee of twenty-five per cent of the value of the property recovered; that said "Mississippi Choctaws"
243 were then in an impoverished condition and were without funds with which to pay any part of the expenses of prosecuting their claims and that the twenty-five per cent stipulated to be paid in said agreement to the said Lindly was in payment of expenses to be advanced in the prosecution of said cases as well as the compensation to be paid said Lindly for services rendered; that thereafter, said agreement was duly acknowledged by the said Lindly before a Judge of the United States Court in Indian Territory and in January, 1907, said agreement was acknowledged by the representatives of the said three bands of "Mississippi Choctaws" before the judge of a Court of Record at Meridian, Mississippi. Your petitioner assisted in defraying the expenses incident to the securing and making of this agreement, and it was then understood and agreed between petitioner and the said Lindly that they were to be equal beneficiaries under said agreement.

Your petitioner further represents that during the year 1896, and during the pendency of the negotiations leading up to the signing of said agreement, and thereafter, your petitioner and the said Lindly, prepared and presented to the said Dawes Commission the claims of certain "Mississippi Choctaws," which were urged as "test cases," and upon the determination of which depended the rights of all other "Mississippi Choctaws;" that said petitions, and briefs in support thereof, were prepared by your petitioner and the said Lindly; that your petitioner appeared before the Commission with the said Lindly in advocacy of the rights of said claimants; that the said Lindly orally argued said cases on diverse and sundry occasions and at various places before said Commission and used his utmost skill and best endeavors to secure for them their just rights to individual shares in said property.

244 Your petitioner further represents that under and by virtue of the authority conferred upon said Dawes Commission by the act approved June 10, 1896, said Commission was required to determine the rights of all "Mississippi Choctaws," and that in rendering such decision they denied the rights of all such Indians resident in the State of Mississippi; that there were several thousand such claimants thus denied. Under the authority contained in said act, appeals were authorized to the United States District Court from the decision of said Dawes Commission. By agreement with the then attorneys for the said Nations, test cases were instituted in the United States District *District* Courts in the then Northern Judicial District sitting at Muskogee, in the then Central Judicial District sitting at South McAlester, and in the then Southern Judicial District sitting at Ardmore. Your petitioner and the said Lindly were present at the argument of each of said cases at said places, and the said Lindly participated in the argument and presentation of the rights of said

"Mississippi Choctaws" to share in said property at the hearing of said case at South McAlester, and your petitioner personally participated in the argument and presentation of the cases at Ardmore; that the judges of the United States Court at South McAlester and Muskogee decided said cases adversely to the rights of the claimants; that the judge of the United States Court sitting at Ardmore decided said cases favorably to the rights of the claimants. Thereafter, your petitioner and the said Lindly presented the question of the rights of said "Mississippi Choctaw" claimants to the Indian Committees of the House and Senate of the Congress of the United States, and to the individual members thereof, and as a result of the efforts of your petitioner and the said Lindly and the effect of said favorable
245 decision procured by them from the United States Court, sitting at Ardmore, provision was included in the Act approved June 28, 1898, (30 Stat. at Large, 495), intended to protect the rights of the said "Mississippi Choctaws."

Your petitioner and the said Lindly then realized that a proper prosecution of the individual claims of the "Mississippi Choctaws" would entail a large amount of work, making it necessary for them to procure assistance. Accordingly, an offer was made to Chester Howe, then an attorney at law, with offices in the City of Washington, D. C., who was then actively engaged in practice before the Interior Department, to associate himself with petitioner and the said Lindly in the prosecution of said claims. As a result of said offer, an agreement was entered into between the said Lindly, your petitioner and Chester Howe, a copy of which is hereto attached, marked "Exhibit A," and made a part of this petition. Under said agreement your petitioner and the said Chester Howe were each to receive one-fourth of whatever amount was recovered from each and every "Mississippi Choctaw" whose claim was successfully prosecuted, it being at that time understood that the said Lindly had agreed to compensate J. E. Arnold, L. P. Hudson, Woodson Arnold, and John London for services rendered and to be rendered by them in connection with the procuring of contracts and the prosecution of said claims and it was provided that the said Lindly should have as his share of said fees, one-half of the amount recovered, out of which he was to pay the said J. E. Arnold, Woodson Arnold, L. P. Hudson and John London, for the services theretofore and thereafter rendered and to be rendered by each of them.

Your petitioner further represents that shortly after W. A. Jones assumed the duties of Commissioner of Indian Affairs in the
246 year 1897, petitioner and Chester Howe presented to him the agreements entered into with the representatives of the "Mississippi Choctaws," for approval by the Department, as required by Section 2103 of the Revised Statutes of the United States; that there was present at said conference W. A. Jones, then the Commissioner of Indian Affairs, George A. Ward, then attorney for the Indian Bureau, Chester Howe, and your petitioner; that after consideration of the matter, it was thought doubtful if said agreement came properly within the provisions of Section 2103 of the Revised Statutes of the United States; that the subject matter was a controversy between

the bands of "Mississippi Choctaws" and the members of the Choctaw Nation residing in the then Indian Territory, and further because the members of the three bands of "Mississippi Choctaws" residing in the State of Mississippi were citizens of the United States, and therefore they were fully possessed of contractual rights and that approval by the Department of agreements made with them was unnecessary.

Your petitioner, Chester Howe, and M. M. Lindly then decided to take, in addition to the contract with the representatives of said three bands of Indians, individual contracts. Accordingly, arrangements were made whereby L. P. Hudson, J. E. Arnold, Woodson Arnold and John London were to secure individual contracts with the members of the bands of "Mississippi Choctaws." At this time your petitioner, Chester Howe, and M. M. Linly were representing numerous Choctaw and Chickasaw claimants residing in Indian Territory and whose claims had either been denied or not acted upon by the said Dawes Commission. From these claimants your petitioner and his associates were to receive fees aggregating several thousand
247 dollars. These fees were collected and the money used in defraying the expenses of taking the individual contracts with the members of the said bands of "Mississippi Choctaws," residing in the State of Mississippi, and your petitioner represents that each and every contract taken by the said J. E. Arnold, Woodson Arnold, L. P. Hudson, and John London with a "Mississippi Choctaw" was taken by them as the agent or agents of your petitioner, Chester Howe and M. M. Lindly and were secured as a result of said band contracts and in accordance with the said contract hereto attached and marked "Exhibit A;" that the expenses of taking said contracts were defrayed out of the money belonging to your petitioner, Chester Howe and M. M. Lindly, and that said J. E. Arnold, Woodson Arnold, L. P. Hudson, and John London have not now and never have had any interest in any contract taken by any of them with any "Mississippi Choctaw," other than the interest they had under and by virtue of an understanding and agreement they had with M. M. Lindly whereby they were to receive as their share of said fees one-fourth of the amount recovered.

Your petitioner recently learned that the individual contracts taken by the said J. E. Arnold, Woodson Arnold, L. P. Hudson and John London, or a part of them, with individual Choctaws, and which individual contracts were secured as a result of the contract with the three bands, were either taken in triplicate, or subsequent contracts were taken with the same Indians by said J. E. Arnold, Woodson Arnold and L. P. Hudson, and that said contracts, secured in triplicate, were sold or money raised or hypothecated as security for loans by either J. E. Arnold, Woodson Arnold and L. P. Hudson, or either of them, to individuals and banks residing and located
248 in the then Indian Territory, now Oklahoma and Texas; that your petitioner is reliably informed that one set of said contracts were either sold to or deposited with the Bankers National Bank, of Ardmore, Oklahoma, by the said J. E. Arnold, and that upwards of twenty thousand dollars was realized thereon; that the

two remaining sets of contracts were disposed of to other parties to your petitioner unknown; that neither the said J. E. Arnold, Woodson Arnold, or L. P. Hudson had any authority to sell and dispose of said contracts or to pledge them as security; that none of the money realized by them was ever paid to your petitioner, or to his knowledge to M. M. Lindly, but your petitioner is informed that the said Chester Howe did receive a part of said money.

Owing to the construction of the act of June 28, 1898, by the Commission and the Department, your petitioner and his associates, Howe and Lindly, were unable to successfully prosecute the claims of said "Mississippi Choctaws" before said Commission and the Department, and during the sessions of Congress in 1899, 1900, 1901 and 1902, inclusive, they made repeated efforts to secure the enactment of legislation referring the claims of said "Mississippi Choctaws" to the Court of claims or legislation directing the Secretary of the Interior to enroll said "Mississippi Choctaws," and give them their individual distributive shares of said property; that during the year 1902, your petitioner and his associates, acting in conjunction with others, secured the inclusion of a provision in the act approved June 1, 1902, and known as the "supplemental agreement" with the Choctaws and Chickasaws, which provision protected the rights of those people; that pursuant to said legislation, about nineteen hundred of said "Mississippi Choctaws" were enrolled by the Commission
249 and the Department and have since received distributive shares of said estate and are now joint beneficiaries of the lands and funds now held by the United States for them; that in the procurement of said legislation and the prosecution of said claims, your petitioner and his associates, Chester Howe and M. M. Lindly, expended large sums of money, devoted nearly eleven years of time and work to the prosecution of said claims, and except for their efforts in behalf of said "Mississippi Choctaws," none of said "Mississippi Choctaws" would have secured any share in the common property of the Choctaws and Chickasaws in Oklahoma; that the individual shares received and to be received by each of the nineteen hundred "Mississippi Choctaws" who have enrolled on the citizenship rolls of the Choctaw Nation, are worth in excess of six thousand dollars; that your petitioner and his associates, Lindly and Howe, are entitled to be compensated for their services under said band contract out of each and every estate so obtained, for each and every "Mississippi Choctaw" enrolled and who has received and is to receive a distributive share in said estate; that in computing such compensation, consideration should be given to the impoverished condition of those people at the time the said M. M. Lindly entered into said agreement with the three bands of Mississippi Choctaws, to the fact that said claims were prosecuted at the expense of your petitioner and his associates and that their fee was entirely dependent upon the recovery of the property rights of said "Mississippi Choctaws."

Your petitioner further shows that under and by virtue of the individual contracts taken by the said J. E. Arnold, Woodson Arnold,
L. P. Hudson and John London, as agents or representatives
250 of your petitioner, M. M. Lindly and Chester Howe, your petitioner and his said associates are entitled to further com-

pensation for the specific services rendered to each of said individuals in the procurement of his identification, and his final allotment together with all the expenses incident thereto. That petitioner and his associates are entitled to have this compensation for services rendered computed upon the basis of a contingent contract.

Wherefore, your petitioner prays:

(*a*) That he and his associates, M. M. Lindly and Chester Howe, and their agents and representatives, J. E. Arnold, Woodson Arnold, L. P. Hudson and John London, may have judgment for the value of their services rendered and expenses incurred and disbursements made by them in the prosecution of the claims of all "Mississippi Choctaws" under the agreement with the representatives of the said three bands, which three bands represent all the Choctaw Indians residing in the State of Mississippi, together with interest thereon from the date of the procurement of each individual right.

(*b*) That your petitioner and his associates, Chester Howe and M. M. Lindly, and their agents and representatives, J. E. Arnold, Woodson Arnold, L. P. Hudson, and John London, may have additional judgment for services rendered to, and money expended for, each and every person with whom individual contracts were made by your petitioner and his associates or either of their agents or representatives and which persons were represented individually by either your petitioner or his associates or any of their said agents or representatives and whose enrollment as Choctaw Indians was directly attributable to the efforts of your petitioner or his associates or either said agents or representatives.

251 (*c*) That separate judgments be rendered in favor of your petitioner and his associates and their said agents or representatives upon the following basis: to your petitioner twenty-five per cent of whatever amount is adjudged to be due your petitioner and his associates and their said agents or representative; to the estate of Chester Howe twenty-five per cent; to M. M. Lindly twenty-five per cent; to J. E. Arnold, Woodson Arnold, L. P. Hudson, and John London twenty-five per cent, to be divided among them as may seem just and proper.

WALTER S. FIELD.

WEBSTER BALLINGER,
Attorney for Petitioner.

DISTRICT OF COLUMBIA, *ss:*

Walter S. Field, being first duly sworn on oath deposes and says that he is the petitioner above named; that he has read the foregoing petition by him signed and knows the contents thereof; that the matters and things therein stated of his own personal knowledge are true and that those stated upon information and belief he believes to be true.

WALTER S. FIELD.

Subscribed and sworn to before me this sixth day of June, 1910.

[SEAL] L. M. FOX,
Notary Public, D. C.

My commission expires May 10, 1910.

252 "EXHIBIT A."

This contract made and entered into this — day of July, 1898, by and between M. M. Lindly, of South McAlester, Indian Territory, and Walter S. Field and Chester Howe, of Washington, D. C.

Witnesseth, That whereas the said M. M. Lindly holds contracts and powers of attorney from various individuals non-resident Choctaw Indians and from the bands and organizations of said non-resident Choctaws residing in Mississippi and known as Mississippi Choctaws as well as from various individual Mississippi Choctaws residing in Indian Territory who are entitled under the various treaties to share in the lands and funds of the Choctaw Nation in Indian Territory, and the said Lindly being desirous of securing the assistance of the said Field and Howe in procuring such action on the part of the United States as will result in the establishment of the right of said Indians to share in the property of said Choctaw Nation, it is agreed that the said Lindly shall assign to each of said Field and Howe the one-fourth part of each and every of said contracts, and that he, the said Lindly, will employ such assistants as shall be necessary to properly prepare the petitions and papers of said persons and to take new contracts with such other persons as may desire to employ the said parties to present and prosecute their claims to Choctaw citizenship. And the said Lindly further agrees to properly present by himself or through his employees all cases coming hereunder to the Dawes Commission and to account to said Walter S. Field and Chester Howe for all money collected hereunder, remitting to each of them the one-fourth part thereof, and the said Walter S. Field and Chester Howe hereby agree that they will present the cause of said Mis-
253–285 sissippi and non-resident Choctaws to the proper authorities to the end that appropriate legislation and Departmental action protecting the rights of said Indians in and to the property of said Choctaw Nation may be secured.

M. M. LINDLY,
WALTER S. FIELD,
CHESTER HOWE.

286 *Intervening Petition of John London.*

Filed by Leave of Court February 23, 1912.

In the Court of Claims, United States of America.

No. 29,821.

The ESTATE OF CHARLES F. WINTON, Deceased, et al.,

vs.

JACK AMOS and Others, KNOWN as the "MISSISSIPPI CHOCTAWS."

Intervening Petition of John London.

Your petitioner respectfully represents:

That he is a citizen of the United States and now is and was at the time and times set forth herein, an attorney at law, duly admitted to practice in the courts of the United States ,and that he was well acquainted with the conditions in Mississippi and with the "Mississippi Choctaws" as a class. That under the provisions of the Act of Congress of April 26, 1906, conferring jurisdiction in the above action upon the Court of Claims as amended by the Act of May 29th, 1908, he files this petition in his own right and as an associate of Chester Howe and of Walter S. Field and M. M. Lindly, associated with the said Chester Howe as set forth in the petitions of the said M. M. Lindly and Walter S. Field heretofore filed.

That in the year 1897 the Choctaw tribes of Indians in the State of Mississippi, being then organized into three bands or towns
287 and being desirous of securing for its individual members the right to share in the tribal property in the Indian Territory, requested M. M. Lindly, intervener herein, to go to Mississippi for the purpose of arranging with the said band for the proper representation of their members before the proper United States authorities. That in pursuance of said request your petitioner went to the State of Mississippi at five different times and went from Fort Smith, Ark., and spent in the work of the said "Mississippi Choctaws," a total of ten months, and went from man to man and from house to house, and there in conjunction with J. E. Arnold, intervener herein, who was then in Mississippi, procured from the said three bands of Indians there residing, and subsequently known as the "Mississippi Choctaws," properly executed contracts under Section 2103 of the Statutes of the United States, authorizing him, the said M. M. Lindly, his associates and assigns, to appear in their behalf and in behalf of the individual members of the said bands before the various departments of the United States Government, the courts and the Congress and its various committees and wherever else necessary, and there to urge their and each of their rights to citizenship in the Choctaw nation, to the end that they, the said Mississippi Choctaws, might be, by the proper authorities accorded all the rights, privileges and immunities

of other citizens of the Choctaw nation and be permitted to participate in the allotment of land and the distribution of the estate of the Choctaw nation in the Indian Territory. That at the same time for the said Lindly and at his request and in his name, they, the said J. E. Arnold and your petitioner, secured from a large number of the heads of families, comprising the three bands of the Choctaw Indians,
288 properly executed powers of attorney, authorizing the said Lindly to appear for them and members of their families before the tribunal above set forth for the purpose of protecting the rights of the said persons in and to their share of the common property of the Choctaw nation in the Indian Territory. That in each and all of said contracts and powers of attorney so executed, it was agreed that said Lindly and his associates and assigns should receive for such services so to be rendered a sum equal to twenty-five per centum of the value of all the property received by each and every person included within the terms of the said contract as a result of their enrollment as citizens of the Choctaw nation in the Indian Territory.

That at the time the said contracts were executed the said Arnold was without funds and wholly insolvent; that the said Lindly gave the said Arnold money for the payment of all expenses of the taking of the said contracts and powers of attorney, but the same so given to the said Arnold not being sufficient for that purpose, this petitioner paid from his own funds the remainder amounting to the sum of five thousand two hundred dollars, which amount was a necessary and reasonable expenditure.

That the said powers of attorney and the said band contracts were by your petitioner and the said Arnold, delivered to the said Lindly on or about the 15th day of July, 1897, and it was mutually agreed by and between the said Lindly and your petitioner and the said Arnold that your petitioner should present the Mississippi Choctaws and each and every one of them, and their causes to the Dawes Commission at such time and times as it might require for the purpose of securing appropriate action by the said Commission and that the said Arnold should assist by notifying the said Mississippi Choctaws of the date or dates when they should be required to attend before
289 the said Commission and by bringing the applicants before the said Commission in case they were too poor, too ignorant or too superstitious to attend upon their own motion. For such services, so to be rendered, that petitioner and the said Arnold were each to receive one-third of whatever the said Lindly finally received, it being understood that the said Lindly and W. S. Field were at that time jointly interested in the said contract. It was further understood and agreed between all the parties hereto that the share of the said J. E. Arnold should, however, be subject to a deduction for any and all amounts of cash advanced him by either your petitioner or the said Lindly for the purpose of enabling him, the said Arnold, to secure the attendance of the Indians before the said Commission, and that in the final division of the proceeds, the share of each, your petitioner and the said Lindly, should be increased

by the sum so advanced for such purpose, together with lawful interest.

That thereafter it was deemed advisable and was agreed by said Lindly and his associates, including this petitioner, to take other contracts supplemental to the land contracts above mentioned, and that in pursuance of said agreement, contracts were so taken by your petitioner from all adults and heads of families by them brought before the Dawes Commission, and also from others who came of their own volition, but whom your petitioner represented and provided with a written application for the information of himself and the said Commission. That the total number of the contracts so taken supplemental to the said land contracts with full blood Mississippi Choctaw adults and heads of families was more than six hundred, as will appear from the evidence in this cause.

Your petitioner further shows that thereafter, and in accordance with the agreement above mentioned and described, he ap-
290 peared before the Dawes Commission when, under the various acts of Congress, it was considering the rights of the said Mississippi Choctaws to share in the funds and lands of the tribe in the Indian Territory, and that he there presented the laws and treaties relating thereto and further showed to the said Commission the unfortunate state and condition of the said people and the impossibility of dealing with them and particularly with the full-blooded element, if it should be held to be necessary for them to show their ancestry and descent. That he further presented to the Commission various full-blood members of the said tribe and lands since enrolled as the Mississippi Choctaws and furnished the said Commission with all the necessary information for them to have in the final identification and enrollment of the said Indians upon the Mississippi Choctaw rolls.

Petitioner further alleges that the Commission exhibited a marked antagonism towards said Indians and refused to permit your petitioner or any attorney to come before the said Commission as a representative of the said individual Mississippi Choctaws. That your petitioner thereupon, in order that the rights of the said full bloods might be fully protected, provided each head of a family with a typewritten application setting forth his full rights and equity, and instructed him to present the same to the Commission when he appeared before it for identification. That of the approximately nine hundred heads of families and adults representing the entire list of Mississippi Choctaws finally identified and enrolled, your petitioner provided more than nine hundred with the necessary application above set forth, and your petitioner is informed and verily believes that each person so supplied with such application duly verified did present the same to the Commission, and that the said Com-
291 mission, in a very large measure secured the information upon which they based their identification and enrollment from applications so provided by your petitioner. That the form of the application so used as above set forth, was furnished by the said W. S. Field and M. M. Lindly to your petitioner, and a copy thereof is hereto attached marked "Exhibit A," and made a part of this petition. That wherever said Commission refused the enrollment of any

of said applicants, your petitioner immediately provided for an appeal in said cause by having properly executed and verified thereof and therefore to the Commissioner of Indian Affairs, which, when so executed was forwarded by him to the said M. M. Lindly. That forms of said petition were furnished him by the said interveners, W. S. Field and M. M. Lindly, and a copy of one of said petitions is hereto attached marked "Exhibit B" and made a part hereof.

Your petitioner further shows that the majority of said full bloods were so destitute or ignorant or superstitious that they were with great difficulty and expense induced to present themselves before the said Commission for identification. That in the said matter of procuring their attendance, J. E. Arnold assisted materially and seemed to be amply provided with funds from some source with which to accomplish the desired end.

Your petitioner further alleges that sometime during the year 1898, he was informed by M. M. Lindly that it had become necessary to associate in the said business one Chester Howe, of Washington, D. C., but that the old agreement theretofore existing between said Lindly and your petitioner would not be disturbed thereby, but that the said J. E. Arnold was about to form a partnership with one L. P. Hudson for the purpose of conducting a citizenship business
292 generally in connection with and as agent for said M. M. Lindly, and that thereafter it was not improbable that the services of your petitioner would not be required to any great extent in the Mississippi Choctaw matter. That during the conversation the said J. E. Arnold appeared and there, in the presence of said Lindly and your petitioner admitted the truth of the statements above made and it was agreed that your petitioner should continue the representation of the Mississippi Choctaws in Mississippi before the Dawes Commission until the matter of their identification, then in process, should be completed, and whatever payments for any and all services rendered under the contracts above set forth should be secured, that your petitioner should receive under the contract above set forth full value for all the services rendered by him.

Your petitioner further shows that during the early part of the conduct of this business, the said Arnold represented himself to the said Mississippi Choctaws and all persons with whom he came in contact that he was associated with Walter S. Field at Washington, D. C., M. M. Lindly at South McAlester, Indian Territory, and also your petitioner, and, at a later date, with Chester Howe at Washington, D. C.

Your petitioner further shows that after the organization of the firm of Hudson and Arnold, in an attempt to learn from the said Arnold something of the then condition of the said business, was informed by the said Arnold that all the six hundred or seven hundred individual contracts heretofore made by the full-blooded Choctaws, as above stated, had been delivered to him by the said M. M. Lindly for the purpose of having them retaken under the new acts of Congress, and that the firm of Hudson and Arnold had, at that time,
as agents for said Lindly, secured the re-execution of all of
293 the said contracts for the benefit of the said Lindly and his associates.

Your petitioner further shows that during all the time hereinbefore mentioned and set forth, the said Arnold was acting as an agent for the said Lindly in the matter of procuring the enrollment of Choctaw citizens other than those set forth before, and that he was informed by the said Arnold that the money expended by him in procuring the attendance of the full-blooded Choctaw Indians (Mississippi) before the Dawes Commission, as hereinbefore stated, was procured from said business, but that the same was insufficient and your petitioner at various times was compelled to and did advance to the said business money to assist in the said matter and that the amount so advanced for such purpose was and is the sum of five thousand two hundred dollars, and that in the performance of said services hereinbefore stated he expended large sums in traveling to and from Mississippi to the Indian Territory and other places, the amount of which is the sum of five thousand dollars.

Your petitioner further shows that as a result of the services so rendered by him and his associates, each and every one of these Indians, known as the Mississippi Choctaws, who have been identified and duly allotted and enrolled by the Commission to the Five Civilized Tribes have become possessed of an estate worth in excess of six thousand dollars, and that your petitioner and his associates have spent much time without compensation and have been to great expense in the accomplishment of this result.

That your petitioner and his associates, representing as herein set forth, the entire body of the Mississippi Choctaws are entitled to be compensated for their services out of the estate so obtained in
294 what was formerly known as the Indian Territory, now Oklahoma, for each and every such Mississippi Choctaw Indian family allotted and enrolled in the Choctaw nation. That in computing such compensation, consideration should be given to the financial condition of these people prior to the allotment and the said compensation should be based upon the basis of a contingent fee.

Wherefore, your petitioner prays that he and his associates may have judgment for the value of their services rendered herein, together with their expenses incurred in the rendition of such services together with all disbursements made by them, as hereinbefore set forth, with interest thereon from the time that each item became due and payable.

Your petitioner further prays that the amount found due him and his associates may be properly apportioned under the Jurisdictional Act herein and that a separate judgment may be rendered therefor.

M. S. FARMER, JR.,
Attorney for Intervener.

STATE OF ARKANSAS,
Sebastian County:

John London, being first duly sworn, says that he is the intervener in the above-mentioned case, and that the facts stated in the foregoing petition are true to the best of his knowledge, information and belief.

JOHN LONDON.

Subscribed and sworn to before me this 4th day of December, 1911.

[NOTARIAL SEAL.] JOE H. LINDSEY,
Notary Public.

My commission expires April 20th, 1915.

295 "EXHIBIT A."

Before the Commission to the Five Civilized Tribes.

Sitting at Mississippi.

In the Matter of Application of —— —— for Identification and Enrollment as a Mississippi Choctaw Indian, —— in Indian Territory..

The petition of —— —— respectfully represents that he is a Mississippi Choctaw Indian by blood, that he is a direct lineal descendant of —— ——, a full-blood Choctaw Indian residing upon the Choctaw reservation in the State of Mississippi, whose name is —— ——.

That the above-named —— —— is also a full-blood Choctaw Indian, who was, during his life time, duly and regularly married to a full-blood Choctaw Indian woman, and that your petitioner is a direct descendant from the issue of said marriage.

Your petitioner further represents that he was on or about the — day of —— duly and regularly married to one —— —— and that there has been born, as the issue of said marriage, now living, the following children, namely, —— —— aged — years; —— —— aged — years.

Your petitioner further represents that he has been a resident of the old reservation in the State of Mississippi for many years; in fact, that his ancestors lived upon said reservation before him and that he has continued to reside in that locality ever since. That he is now desirous of availing himself of his rights in the Indian Territory, and makes this application for purpose of being
296 identified and enrolled and allotted as a Mississippi Choctaw Indian. He therefore prays that he be so identified and enrolled.

—— ——.

297 "EXHIBIT B."

Before the Commissioner of Indian Affairs, Washington, D. C.

In the Matter of the Enrollment of J. F. RILEY et al., as Members of the Choctaw Tribe of Indians.

Comes now your petitioner, J. F. Riley et al., and for himself and all the persons hereinafter named and shows to your honor:

That he, together with all the other parties herein named (except

those shown to be intermarried persons) are the legal and lineal descendants of one Frances Riley, née Chambers, a full-blood Choctaw Indian woman and a recognized member of the Choctaw Tribe in the old Choctaw Nation in the State of Mississippi; that the said Frances Riley was the daughter of John Chambers and Nancy Chambers, née Fulsom, both of whom were full-blood Choctaw Indians, and as such lived and died as members of the Choctaw Tribe in Mississippi, and whose names appear or should appear on the official rolls of said Choctaw Nation.

Your petitioner shows that the said Frances Riley was on the — day of ——, — duly and lawfully married to Cornelius Riley, and that there was born as issue of said marriage the following named children, to-wit: Jane L. Hulitt, née Riley; Mary E. Broom, née Riley; M. D. Riley, J. F. Riley, and Millie A. Fountain, née Riley, and that all of said persons are living and have legal issue as hereinafter stated.

That the said Millie A. Fountain was on the — day of ——, 18—, duly and lawfully married to James Hulitt, a white man, and that there were born as issue of said marriage the following
298 named children: Albert C. Hulitt and Franklin Hulitt, both of whom are still living and have issue as hereinafter stated.

That the said Millie A. Fountain was on the — day of ——, 18—, duly and lawfully married to J. A. Fountain, a white man, and that there was born as issue of said marriage, the following named children: Charles E. Fountain, Emma A. Harper, née Fountain; Pink R. Brunson, née Fountain, and Kate Fountain, all of whom, together with their issue, are still living.

That your petitioner, J. F. Riley, was duly and lawfully married on the 19th day of December, 1866, to Elizabeth Riley, his late wife, now deceased, a white woman, and that there was born as issue of said marriage, the following children, to-wit: J. M. Riley, J. F. Riley, Jr., Luella Rairchilds, née Riley; Cora Upchurch, née Riley; Eddie Riley, A. C. Riley, Josephus Riley, and John B. Riley, all of whom are living with issue as hereinafter set out.

That the said M. D. Riley was on the 11 day of Mch., 1869, duly and lawfully married to his present wife, Sarah E. Riley, a white woman, and that there was born as issue of said marriage, the following children, to-wit: E. W. Riley, Collis A. Riley, Mildna Q. Riley, Kate Riley, Nancy E. Riley, and Margaret L. Riley, all of whom are living and have issue as hereinafter set out.

That the said Albert C. Hulitt was on the 23rd day of —, 1880, duly and lawfully married to his present wife, a white woman, Mary C. Hulitt, and that there was born as issue of said marriage, the following children, to-wit: James E. Hulitt, age 16 years; Mary E. Hulitt, age 14 years; Allen F. Hulitt, age 11 years, all of whom are now living.

That the said Franklin Hulitt was on the 30th day of
299 June, 1891, duly and lawfully married to his said wife, a white woman, Mollie Hulitt, and there was born as issue of said marriage, the following named children, to-wit: Frank C.

Hulitt, aged 5 years; Alice Hulitt, aged 2 years; Alex. Hulitt, aged 3 years, and Julia Hulitt, aged 1 year, all of whom are living.

That the said Pink Brunson, née Fountain, was on the 20 day of Jan., 1886, duly and lawfully married to W. L. Brunson, a white man, and that there was born as issue of said marriage, the following named children, to-wit: Kate E. Brunson, aged 12 years; Frank E. Brunson, aged 9 years; Earl C. H. Brunson, aged 6 years; Clara E. Brunson, aged 4 years; Laurence P. Brunson, aged 10 years; James C. Brunson, aged 8 years; George S. G. Brunson, aged 5 years; Daniel W. Brunson, aged 1 year, and Madimore Brunson, aged 1 month, all of whom are living.

That the said J. F. Riley, Jr., was on the — day of ——, duly and lawfully married to —— —— Riley, a white woman and his present wife, and that there was born as issue of said marriage, the following named children, to-wit: Franklin Riley, aged 7 years; Lucile Riley, aged 5 years, and Dalton Riley, aged 2 years, all of whom are living.

Your petitioner further shows that the person heretofore mentioned as Mary Broom, née Riley, his sister, and the daughter of the said common ancestor of all these applicants, Frances Riley, née Chambers, moved west to the present Choctaw Nation in the year of 18—, with her family, and remained there; that she made application as provided by law to be enrolled as a citizen of the Choctaw Nation as the descendant of the said Frances Riley, and a judgment was rendered in favor of her and all her family, thereby fully adjudicating and finally determining the status as Choctaw
300 Indians of all the descendants of the said Frances Riley, née Chambers, a copy of which said judgment is hereto attached, marked Exhibit "A" and made a part hereof, and that on the — day of ——, 1899, the Commission to the Five Civilized Tribes did, while at Wister, Indian Territory, place her name and that of all her family on the final roll of the Choctaw Tribe of Indians in the Indian Territory.

Your petitioner further shows that all other persons named herein are bona fide residents of the State of Mississippi, where they were nearly all born and where they have lived the principal part of their lives, and where their common ancestors, Frances Riley, elected to remain as provided by the treaty between the United States and the Choctaw Nation of Indians, September 30, 1830.

Your petitioner further shows that during the time that the Commission to the Five Civilized Tribes was in the State of Mississippi making the recent roll of the Mississippi Choctaws that each head of family heretofore named, appeared in person at the place designated by the said Commission for the special purpose of having themselves and the names of their family placed upon said rolls and offered to make proof of their said ancestor's status as a Mississippi Choctaw and anything in addition thereto that was proper and legal for the satisfaction of said Commission, but that they were denied all privileges, their names refused and they were rejected without a hearing.

Your petitioner further shows, that as Choctaw Indians, as heretofore set out, he and all the applicants herein named as Indians

by blood, are Mississippi Choctaws, whose status was permanently declared and whose rights to share in all the benefits of the Choctaw Tribe, except annuities, was forever guaranteed under the fourteenth article of the treaty made, entered into, signed, approved and
301 confirmed by and between the Government of the United States and the Choctaw Tribe of Indians on the 30th day of September, 1830, of which said treaty is in full force and binding effect.

Your petitioners further show that the notice given when the Commission to the Five Civilized Tribes came to Mississippi for the purpose of enrolling the Mississippi Choctaws, was the only notice that they have ever received to appear before any tribunal for the purpose of determining their status or enrolling their names as members of their said tribe, and that they and each of them have always been ready to comply with any law passed by the Congress of the United States and to obey and abide by any ruling made by the department in charge of Indian Affairs, for the purpose of preserving their rights to which their Indian blood and the law entitles them.

Wherefore, the premises considered, your petitioner prays that his name and that of each of the descendants of the said Frances Riley heretofore given, together with their respective husbands and wives heretofore mentioned and herein set out as such, be placed upon the rolls of the Mississippi Choctaws and that they and each of them be decreed all the rights and benefits to which their Indian blood and the laws and treaties entitle them.

J. F. RILEY.

J. F. Riley, being first duly sworn, upon oath, states: That he is the person mentioned in the foregoing petition; that he has read over the said petition and knows the contents thereof, and that he is personally acquainted with all the parties mentioned therein, and that the matters and things therein contained are true.

CHAS. KRAMER, *J. P.*

302 Subscribed and sworn to before me this 26th day of Dec., 1899.

[NOTARIAL SEAL.] CHAS. KRAMER,
J. P., and Ex-Officio Notary Public.

303 PARTY "EXHIBIT B."

Before the Commissioner of Indian Affairs, Washington, D. C.

In the Matter of the Enrollment of E. W. Riley and His Family as Members of the Choctaw Tribe of Indians.

Comes now your petitioner, E. W. Riley, for himself and for all persons hereinafter named, and shows to your honor:

That he, together with all other persons named herein (except

those shown to be intermarried persons), are the legal and lineal descendants of one Frances Riley, nee Chambers, a full-blood Choctaw Indian woman, as set forth in the petition of J. F. Riley et al., to which this petition is attached and of which it is made a part.

Your petitioner further shows that on the 23d day of Feb., 1888, he was duly and lawfuly married to his present wife Riley, a white woman, and there has been born as issue of said marriage, the following children: Franklin, Lucile, and Dalton Riley, aged, respectively, seven, five, and two years. That all of the said children are alive and that they, together with his said wife and your petitioner, are all bona fide residents of the State of Mississippi, where they were born and where their common ancestor, the said Frances Riley, elected to remain when the Choctaws were removed to the west.

Your petitioner further shows that he appeared before the Commission to the Five Civilized Tribes at Philadelphia, Neshoba County, Miss., one of the places designated by the said Commission for enrolling applicants during the time they were making their recent rolls of the Mississippi Choctaws in the State of Mississippi
304–309 for the purpose of having his name and those of his family enrolled as such, but that said Commission refused to hear him in his own or in their behalf, and also refused to hear him as a witness for the other descendants of the said Frances Riley, wherefore this petition to your honor.

Wherefore, the premises considered, your petitioner prays that his name and that of his said wife, Ettie Riley, and their three children, Franklin, Lucile, and Dalton Riley, aged, respectively, seven, five, and two years, be placed on the rolls of the Mississippi Choctaws as provided by law, and that they and each of them be decreed all the rights and benefits to which their Indian blood and the treaties and laws entitle them.

E. W. RILEY.

E. W. Riley, being first duly sworn, upon his oath, says: That he is the petitioner named in the above and foregoing petition; that he has read over the same, together with the petition of J. F. Riley herewith, and that the matters and things contained in each of the said petitions are true.

CHAS. KRAMER, *J. P.*

Subscribed and sworn to before me this 26th day of Dec., 1899.

CHAS. KRAMER,
[NOTARIAL SEAL.] *J. P., and Ex-Officio Notary Public.*

310 III. History of Proceedings.

On June 1, 1908, the withdrawal of Robert L. Owen, Esq., as attorney was filed and motion made to substitute James K. Jones in his stead.

On September 8, 1908, a motion was made to subetitute Wirt K.

Winton, adm'r. of Charles F. Winton, as claimant, was filed and the motion was allowed September 10, 1908.

On June 8, 1909, the defendants filed a traverse.

On June 24, 1909, the defendants filed a general traverse to the petition of Ralston & Siddons.

On November 11, 1910, Ralston, Siddons & Richardson filed their withdrawal as attorneys for M. M. Lindly, intervenor.

On January 28, 1911, Ralston, Siddons & Richardson were substituted as attorneys for James E. Arnold, intervenor.

On March 4, 1911, Ralston, Siddons & Richardson, attorneys, filed a motion to make the United States a party defendant, which motion was overruled by the Court in the opinion of the Chief Justice of May 29, 1916, which will appear later in this record.

On March 4, 1911, a petition for an order requiring the United States to retain possession of funds subject to the payment of the judgments in this case was filed, which motion was overruled March 31, 1911.

On February 17, 1912, a motion was filed to dismiss, which was argued May 20, 1912, and the motion was overruled December 2, 1912.

On January 18, 1913, a power of attorney from Robert L. Owen to W. W. Scott was filed.

311 IV. *General Traverse to the Petition and Intervening Petitions, Filed by Defendant July* 11, 1913.

In the Court of Claims of the United States.

No. 29,821.

THE ESTATE OF CHARLES F. WINTON, Deceased, et al.,

vs.

JACK AMOS et al., Known as Mississippi Choctaws.

And now come the defendants, by the Attorney General of the United States, and, answering the petition and intervening petitions of the claimants herein, denies each and every allegation therein contained and asks judgment that the said petition and intervening petitions be dismissed.

HUSTON THOMPSON,
Attorney General.

312 V. History of Further Proceedings.

The case was argued on October 14, 15, 16, 20, and 21, 1913, and submitted to the Court.

On December 7, 1914, the Court filed tentative findings of fact and per curiam opinion, and an order allowing forty days to all par-

ties in interest to file objections to findings and to file briefs, and allowed thirty days thereafter to defendants and all others to reply thereto. The case was set for hearing February 23, 1915.

On January 21, 1915, a power of attorney from Wirt K. Winton to W. W. Scott, esq., was filed.

On January 21, 1915, objections to the findings of fact filed December 7, 1915, or motions to amend same were filed by Est. of C. F. Winton, Robert L. Owen and other associates of Winton; Louis P. Hudson; Melville D. Shaw; John London; Walter S. Field and M. M. Lindly; James E. Arnold; T. B. Sullivan and Joseph H. Neill; John W. Toles; Est. of Chester Howe; James S. Bounds; William N. Vernon; and the defendants.

On January 27, 1915, the intervenors, Choctaw-Chickasaw Lands and Development Company, filed a motion for leave to file reply and objections to findings of December 7, 1914, which was ordered to the files to be considered when case comes up on merits.

On January 28, 1915, a motion was filed by Walter S. Field (intervenor) to substitute L. A. Pradt, esq., as his attorney in place of Webster Ballinger, esq., which was allowed by the Court February 5, 1915.

On February 5, 1915, Webster Ballinger, esq., withdrew as attorney for said Field.

313 On February 20, 1915, William W. Scott, filed a motion to amend the petition by making the United States a party defendant, which motion was overruled by the Court in the opinion of the Chief Justice of May 29, 1916, as appears later in this record.

The case was argued February 23, 24, 25, 26, 1915, and submitted to the Court.

On May 17, 1915, the Court filed findings of fact and conclusions of law dismissing the several petitions and intervening petitions, with an opinion by Booth, J.

On August 9, 1915, a motion for new trial, or rehearing, and motion to amend the findings of fact entered May 17, 1915, with brief, was filed by W. W. Scott, esq., attorney for estate of Winton.

On August 14 1915, exceptions to findings of fact and bill of exceptions on behalf of John London were filed by M. S. Farmer, esq.

On August 15, 1915, exceptions for Lindly & Field were filed by L. A. Pradt, esq.

On August 16, 1915, a motion for new trial for Katie A. Howe, ext'x. was filed by W. W. Wright, esq.

On August 16, 1915, a motion for new trial for William N. Vernon was filed by W. W. Wright, esq.

On August 16, 1915, a bill of exceptions for Field and Lindly was filed by L. A. Pradt, esq.

On August 16, 1915, a motion for new trial for J. J. Beckham was filed by W. W. Wright, esq.

On October 5, 1915, the Court allowed the Government counsel until Nov. 15, 1915, to file reply brief to above motions.

314 On November 15, 1915, the defendants filed a brief on claimants and intervenors motion for a new trial and objec-

tions to claimants motion to amend the Court's findings of fact, and Field and Lindly's exceptions, and London's bill of exceptions.

Exceptions of intervenors Field & Lindly to findings of fact and conclusions of law to correct clerical error in former exceptions filed L. A. Pradt, esq.

On November 29, 1915, the intervenors Field and Lindly; James S. Bounds; and John London filed a motion to extend the December Term 1914.

On December 4, 1915, James E. Arnold, intervenor, filed a motion to amend findings of fact and for rehearing.

On December 6, 1915, claimant's motion for new trial *were* ordered to Law Calendar and set for hearing Tuesday, February 1, 1916, at which time all other motions in the case were ordered to be heard.

315 VI. *Argument and Submissions of Motions.*

On February 1, 1916, the argument on all motions was begun by Mr. W. W. Scott for the estate of Winton.

February 2, 1916, the argument was continued by Mr. W. W. Scott for the estate of Winton, and Mr. Guion Miller for the estate of Chester Howe, deceased.

February 3, 1916, Mr. Guion Miller continued his argument for the estate of Chester Howe, deceased; Mrs. M. S. Farmer, Jr., for John London; Mr. William E. Richardson for James E. Arnold et al.; and Mr. George M. Anderson for the defendants.

February 4, 1916, Mr. George M. Anderson continued his argument for defendants, and Mr. W. W. Scott for the estate of Winton, deceased.

February 5, 1916, the argument in the case was continued by Mr. Benjamin Carter for John Boyd; Mr. George M. Anderson for the defendants, and concluded by Mr. William W. Scott for the estate of Winton, and submitted.

316 VII. *Order of the Court on Motions of Claimants and Defendants, Entered May 29, 1916.*

Order.

It is ordered by the Court that the claimants' and defendants' motion to amend findings be and the same are hereby allowed in part and overruled in part.

The former findings are withdrawn and amended findings this day filed. The several petitions and intervening petitions are dismissed.

Opinion by Judge Booth; concurring opinion by Chief Justice Campbell.

BY THE COURT.

317 VIII. *Findings of Fact. Conclusion of Law. Opinion by Booth, J., and Concurring Opinion by Campbell, Ch. J.*

Filed May 29, 1916.

THE ESTATE OF CHARLES F. WINTON, Deceased, and Others,

vs.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

This case having been heard by the Court of Claims, the court upon the evidence, makes the following

Findings of Fact.

I.

The jurisdictional act under which this suit is brought was approved on April 26, 1906 (34 Stat., 140), and provides:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of said Choctaws."

II.

The jurisdictional act was amended by an act approved May 29, 1908 (35 Stat., 457), which provides:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. S. Bounds, and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitably and justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws as individuals by the United States. The said William
318 N. Vernon, J. S. Bounds, and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of section nine of the act of April twenty-sixth, nineteen hundred and six, in behalf of the estate of Charles W.

Winton, deceased: Provided, That the evidence of the interveners shall be immediately submitted: And provided further, That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claim of the said Winton and of the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws."

III.

The associates of Charles F. Winton, now deceased, are Robert L. Owen; James K. Jones, now deceased; Walter S. Logan, now deceased; Preston S. West; Frank B. Crosthwaite; and John Boyd.

Neither the said Jones, Logan, West, Crosthwaite or Boyd filed a petition herein, but the said John Boyd appeared by counsel. His association resulted from a contract with Charles F. Winton and Robert L. Owen, a copy of which appears in the appendix to these findings, page 54.

Later, and before the filing of the petition herein, James K. Jones became, by assignment, an associate of the said Charles F. Winton, deceased. At the time of his death and for many years prior thereto Charles F. Winton was a citizen of the State of Oklahoma. Robert L. Owen and Preston S. West are and have been for many years citizens of the State of Oklahoma. At the time of his death and for many years prior thereto Walter S. Logan was a citizen of the State of New York. Frank B. Crosthwaite and John Boyd are and have been for many years citizens of the District of Columbia.

IV.

The treaty of Dancing Rabbit Creek was entered into between the United States and the Choctaw Nation on September 27, 1830 (7 Stat., 333; Miss. Code, 1848, pp. 121-128), by article 3, of which the Choctaws ceded all of their lands east of the Mississippi River and agreed to remove west of that stream during the years 1831, 1832, and 1833.

Article 14 provided that—

"Each Choctaw head of a family being desirous to remain and become a citizen of the States should be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of 640 acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over 10 years of age; and a quarter section to such child as may be under 10 years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the State for five years after the ratification of this treaty, in that case a grant in fee

simple shall issue; said reservation shall include the present
319 improvement of the head of the family or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove they are not to be entitled to any portion of the Choctaw annuity."

By article 19 reservations of from two to four sections of land each were provided for a limited number of prominent members of the Choctaw Nation by name, and to each head of a family, not exceeding 1,600, a reservation proportionate in size to his improvements and the number of acres he had in cultivation. Captains of the tribe, not exceeding 90, were given one section of land each, and the orphans of the tribe one-half of a section each.

The mixed bloods who elected to remain in Mississippi were provided for under section 19 of the treaty, while the full bloods who remained and elected to become citizens of the State were provided for under article 14; hence the full-blood Mississippi Choctaws have always been called "Fourteenth Article Claimants."

V.

During the pendency of the negotiations between the United States and the Choctaw Nation for the "Dancing Rabbit Creek treaty" the Legislature of the State of Mississippi, where the Choctaws were living on January 19, 1830, passed an act abolishing tribal customs of Indians not recognized by the common law or the law of the State, making them citizens of the State, with the same rights, immunities, and privileges as free white persons; extending over them the laws of the State; validating tribal marriages; and abolishing the offices of chief, mingo, headman, or other post of power established by tribal statutes, ordinances, or customs under penalty of $1,000 fine and imprisonment not exceeding 12 months. (Miss. Rev. Stats., 1840; Code of Miss., 1848.)

The act of the legislature of January 19, 1830, was ratified by the constitution of 1832 (art. 7, sec. 18), and reenacted in the general laws of 1840 and the code of 1848.

The constitution of Mississippi of 1868, however, abolished all distinctions of race, color, or previous status of its inhabitants. By Section 2 of article 1, it declared that "all persons resident in this State, citizens of the United States, are hereby declared citizens of the State of Mississippi"; and by section 2 of the same article it declared that "no person shall be deprived of life, liberty, or property except by due process of law."

The Mississippi Choctaws who removed to the Choctaw Nation were at that time citizens of the United States. They became citizens of Indian Territory by virtue of section 6 of the act of February 8, 1887 (24 Stats., 390), which act was amended by the act of March 3, 1901 (31 Stats., 1447), declaring every Indian in Indian Territory to be a citizen of the United States.

After the Indian Territory was admitted on November 16, 1907, into the Union as a part of the State of Oklahoma the Mississippi Choctaws became, in common with other Indians residing in the

State, citizens thereof, with all the rights, privileges, immunities, and franchises of such citizens. (Sec. 1, art. 3, constitution of Oklahoma.)

320 The enabling act of June 6, 1906 (34 Stats., 267), providing for the admission of Oklahoma into the Union, contained certain reservations by the Government relative to Indians and their property.

On April 26, 1906, Congress extended certain restrictions upon the power of alienation and encumbrance by full-blood Choctaws in Oklahoma. (34 Stats., 144.)

VI.

The Choctaws who remained in Mississippi under article 14 of the treaty of 1830 adopted the dress, habits, customs, and manner of life of the white citizens of that State. They had no tribal or band organization or laws of their own, but were subject to the laws of the State of Mississippi, and no funds were ever appropriated by the Government for their support, though a great deal of land was given to those who remained. Said Choctaws did not live upon any reservation, nor did the Government exercise any supervision or control over them. Neither the Indian Office nor the Department of the Interior assumed or exercised any jurisdiction over them, and never recognized them either individually or as bands, but regarded them as citizens of the State of Mississippi, and the department held that it had no authority to approve any contracts made with them.

VII.

On December 24, 1889, the Choctaw Nation, through its national legislature, memor-alized Congress to provide for the removal of large numbers of Choctaws in the State of Mississippi and Louisiana who were entitled to all of the rights and privileges of citizens in the Choctaw Nation, and to make provision for the emigration of said Choctaws from said State to the Choctaw Nation. In 1891 a commission was provided for and funds appropriated by the Choctaw Council for the removal and subsistence of Mississippi Choctaws to the Choctaw Nation, and during the same year 181 were removed and admitted to citizenship in the nation.

VIII.

By the act of March 3, 1893 (27 Stat., 645), Congress created the Commission to the Five Civilized Tribes, familiarly known as the "Dawes Commission," for the purpose of procuring, through negotiation, the extinguishment of the national or tribal title to the lands of the Five Civilized Tribes living in the Indian Territory and their cession to the United States for allotment in severalty among the members thereof.

By the act of June 10, 1896 (29 Stat., 321), Congress directed the Dawes Commission to make a roll of the Five Civilized Tribes,

and provided that applicants for enrollment should file their applications with the commission within three months from the passage of the act, with right of appeal to the United States courts.

IX.

Thereafter, on June 23, 1896, Robert L. Owen entered into an agreement with Charles F. Winton to proceed to Mississippi and secure contracts with such Indians there resident as might be entitled to participate in any distribution of the lands or
321 moneys of the Choctaw or Chickasaw Nations, Winton binding himself to secure the evidence, powers of attorney, and contracts as prescribed by said Robert L. Owen, said Owen to provide the funds and Winton to receive one-half of the net proceeds of the contracts. This agreement was modified July 23, 1896, by a second contract between the same parties, in which it was provided that Winton should act as attorney in Mississippi Choctaw cases under his agreement with Owen; that said Owen should have a one-half interest in all of said contracts; and in the event of accident to Winton, that Owen should have full authority to take up all Mississippi cases in place of Winton.

X.

Immediately thereafter Winton proceeded to Mississippi, and during the year 1896 and the years following procured approximately 1,000 contracts with full-blood Mississippi Choctaws, some of said contracts being taken in the name of said Winton and some in the name of said Owen. Under the terms of these contracts said Winton and Owen agreed to use their best efforts to secure the rights of citizenship for said Mississippi Choctaws, as members of the Choctaw Nation, in the lands and funds of said tribes, for a fee of one-half of the net interest of each allottee in any allotment thereafter secured. These contracts were subsequently abandoned by said Owen and Winton, because void and nonenforceable under the acts of June 28, 1898, and May 31, 1900, as is hereinafter more fully stated.

Thereafter new contracts were taken principally in the name of Charles S. Daley, an attorney at law of New York City, to the number of several hundred.

Sample copies of all contracts are set forth in an appendix to these findings.

XI.

At the time of the making of these said contracts by Winton and Owen the Mississippi Choctaws, full blood, were extremely poor, living in insanitary conditions and working at manual labor for daily wages. Their children could not attend schools provided for the whites, and they were denied all social and political privileges.

Early in 1897 said Owen spoke to Hon. John Sharp Williams, then a Representative in Congress from the fifth congressional district of Mississippi, wherein practically all full-blood Choctaws in

Mississippi then resided, with reference to the possible rights of Mississippi Choctaws to participate in the partition of the lands of the Choctaw Nation in Oklahoma, at that time also submitting to Mr. Williams a copy of the Dancing Rabbit Creek treaty and calling his attention to article 14 thereof. This was the first time that said matter had been called to the attention of Mr. Williams.

Thereafter and until March 4, 1903, when he ceased to represent the fifth district of Mississippi in the House of Representatives, Mr. Williams suggested or prepared, in conjunction with Senator Walthall in the Senate and Representative Curtis in the House (the latter being chairman of the Committee on Indian Affairs), all the legislation passed in Congress for the benefit of the Mississippi Choctaws.

322 Thereupon, on February 11, 1896, Mr. Williams wrote a letter to the Commissioner of Indian Affairs, stating that a great many Choctaws were living in his district, and made inquiry as to whether they would come in for anything under an act then pending to divide the Choctaw lands in severalty. On November 10, 1896, Mr. Williams wrote another letter to the commissioner asking information as to the rights of Choctaws who had remained in Mississippi after the tribe had removed, stating that he had no information on the subject himself, and the Commissioner of Indian Affairs referred him to the Commissioner of the Five Civilized Tribes.

Thereafter and until March 3, 1903, when his county was placed in another congressional district, Representative Williams was consulted by the chairman, or member in charge of pending bills, upon all legislation concerning the Mississippi Choctaws.

XII.

In December, 1896, Charles F. Winton presented a memorial to Congress on behalf of Mississippi Choctaws, asking that they be enrolled and permitted to share the privileges of Choctaw citizenship in the Choctaw Nation. Again, in January, 1897, a second memorial on behalf of Mississippi Choctaws was presented through Winton, seeking to accomplish the same purpose.

In September, 1897, the said Winton presented a third memorial of the same purport to the Secretary of the Interior.

In the said memorial on behalf of the Mississippi Choctaws it was, among other things, insisted that the Mississippi Choctaws for a valuable consideration had bought and paid for two things to be enjoyed jointly and coincidentally, namely, the right of residence in Mississippi, with the further right of not losing the right of a Choctaw citizen by such residence in Mississippi, and that such residence should never be construed as depriving them of such right thus established by said treaty, and that such right could not be taken from them without their consent, said memorials of December, 1896, and January, 1897, being set out on pages 55 to 59 of the appendix hereto.

XIII.

Prior to the presentation of the memorial first above named, said Owen, in September or October, 1896, appeared before the Commission to the Five Civilized Tribes in behalf of the defendant, Jack Amos, and 97 other full-blood Choctaws residing in Mississippi, and attempted to secure their enrollment under the act of June 10, 1896, which authorized said commission to enroll Indians residing in the Indian Territory who filed their applications within three months from the date of the passage of that act, with right of appeal to the United States District Courts of the Territory. The commission refused to enroll said Amos and said other Choctaws on the ground that they were not resident in the Indian Territory; whereupon an appeal was taken by said Owen to the United States Court for the Central District of Indian Territory, where the ruling of the commission was subsequently affirmed.

This latter decision was later indirectly affirmed by the Supreme Court on May 15, 1899, in the case of Stephens v. The Cherokee Nation (174 U. S., 445), which held the legislation
323 under which the judgment was rendered constitutional and that the court was without jurisdiction to review the decisions of the courts of Indian Territory in refusing to enroll applicants for citizenship in the Five Civilized Tribes.

The litigation of the Amos case before the Dawes Commission and the Territorial court was instituted and maintained by said Winton and associates, and a brief was filed by them in behalf of the Mississippi Choctaws under the title of Emma Nabors et al. v. The Choctaw Nation before the Supreme Court of the United States.

XIV.

At the same time the opinion was rendered in the case of Jack Amos et al. v. The Choctaw Nation, as stated in the foregoing finding, the same Territorial court delivered an opinion in the case of E. J. Horne v. The Choctaw Nation. In the latter case the claimant was a Mississippi Choctaw who, prior to the date of his application to be enrolled, had removed to the Choctaw Nation. It was held that the claimant was entitled to be enrolled by reason of the provisions of article 14 of the treaty of 1830, regardless of his degree of Indian blood, having proved his descent from an ancestor who had complied with the provisions of the treaty. Incidentally it was also held that the act of the Choctaw Council of November 5, 1886, restricting the qualifications for Choctaw citizenship, was invalid because in conflict with the provisions of the treaty conferring the right.

XV.

On February 11, 1897, a resolution, which had been drawn by said Owen, was passed by the Senate directing the Secretary of the Interior to transmit the following information:

"First. A copy of the memorial of the Choctaw Nation of December 24, 1889, relative to the Mississippi Choctaws.

"Second. Deposition of Greenwood Leflore, ex-chief of the Choctaw Nation, of February 24, 1843, before United States Commissioners Clayborne and Graves, relative to importance of the fourteenth article of the treaty of 1830.

"Third. Whether or not the Choctaws entitled to remain in Mississippi by the fourteenth article were reported by United States Commissioners Murray and Vroom to the President of the United States on July 31, 1838, as having been in a great number of cases forced to remove from the reservations granted them by the fourteenth article.

"Fourth. Whether or not the Mississippi Choctaws were parties to any subsequent Choctaw treaty or have ever executed a relinquishment of their rights of Choctaw citizenship."

The Commissioner of Indian Affairs, in his reply to this resolution, February 15, 1897, transmitted, through the Secretary of the Interior, a copy of the memorial of the Choctaw Nation of December 24, 1889, to Congress; a copy of the deposition of Greenwood Leflore, taken on February 24, 1843, before United States Commissioners Clayborne and Graves; and an extract from the report of United States Commissioners Murray and Vroom to the President,
324 dated July 31, 1838, stating that the last two papers called for were copied from the printed record of the Court of Claims in case No. 12742, entitled the Choctaw Nation v. The United States. The Commissioner answered the last inquiry of the resolution by stating that he had not found any provision in the Choctaw treaties of 1837, 1854, 1855, or 1866, by which the Choctaws in Mississippi had relinquished any rights of Choctaw citizenship that they may have acquired under the fourteenth article of the treaty of 1830 or otherwise.

During the consideration by the Committee on Indian Affairs of the House of House bill 10372 said Owen made an argument before the committee. A favorable report was made by the committee upon said bill. The bill never passed either House of Congress.

XVI.

The Indian appropriation act of June 7, 1897, contained the following item:

"That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except interest in the Choctaw annuities."

The above provision (30 Stats., 83) was inserted in the bill in the Senate as a substitute offered by Senator Pettigrew to an amendment which had been offered by Senator Walthall.

XVII.

Following the passage of said act last named said Owen appeared before the Dawes Commission in the interest of the Mississippi Choctaws, with whom he had contracts.

On January 28, 1898, said commission made a report to Congress, as required by the act of June 7, 1897 (Rept. of Com., 1898, p. 15), in which, after referring to the decision of the commission requiring removal by Mississippi Choctaws before they could acquire rights to allotments of Choctaw lands, and the affirmance of its decision by the citizenship court in the Jack Amos case, it was said:

"If, in accordance with this conclusion of the commission, these Mississippi Choctaws have the right at any time to remove to the Indian Territory and, joining their brethren there, claim participation in all the privileges of a Choctaw citizen, save participation in their annuities; still, if any person presents himself, claiming this right, he must be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the fourteenth article of the treaty of 1830. The time for making application to this commission to be enrolled as a Choctaw citizen has expired. It would be necessary, therefore, to extend by law the time for persons claiming this right to make application and be heard by this commission or to create a new tribunal for that purpose."

The commission concluded by recommending that the question should be referred by Congress to the Court of Claims.

325

XVIII.

On June 28, 1898, Congress passed an act commonly known as the "Curtis Act," section 21 of which provided for the making of the rolls of the Five Civilized Tribes by the Dawes Commission, and further provided, among other things, that—

"Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seventh, eighteen hundred and thirty, and to that end may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior.

* * * * * * *

"No persons shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship: Provided, however, That nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or treaties with the United States."

The foregoing proviso was prepared by Mr. Williams, who presented it to Mr. Curtis, then in charge of the bill, who offered it as an amendment to the same.

XIX.

Under date of July 1, 1898, said Owen prepared a general circular for Winton addressed to the Mississippi Choctaws, notifying them of the requirements of the Curtis Act relative to Mississippi Choctaws and advising said Choctaws of the manner in which they must be identified, said circular being in the following words and figures, to wit:

NEWKIRK, O. T., July 1, 1898.

To the Mississippi Choctaws:

For your information I enclose report No. 3080, H. R., 54th Congress, 2d session. The Indian Committee of House of Representatives decided favorably to the Mississippi Choctaws under date of March 3, 1897. This report was obtained for you by active labor, first hunting up the facts and then getting Senator Wallthal to pass a resolution through the Senate to get the information (Sen. Doc. 129, 54th Cong., 2d sess.), and then soliciting Mr. Allen, of Mississippi, to prepare it. By the help of Mr. Williams and Senator Wallthal and Mr. Allen the following item was put in the Indian appropriation act of June 7, 1897:

"That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws, under their treaties, are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities."

This commission, January 28, 1898, submitted their report, copy herewith (H. R. Doc. 274, 55th Cong., 2d sess.), deciding that the Mississippi Choctaws "to avail himself of the 'privileges of a Choctaw citizen,' must prove himself a descendant of a fourteenth-article claimant, and in good faith join the Choctaws west with the intent to become one of the citizens of the nation."

326 In bill H. R. 8581 it was provided, June, 1898, that—

"Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation, concluded September twenty-seventh, 1830, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto, and report to the Secretary of the Interior."

It provides further that—

"No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship: Provided, however, That nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or the treaties with the United States."

Not only the Dawes Commission found that the Mississippi Choctaws would have to move to Indian Territory and establish residence in good faith there, but the United States court, Judge Clayton presiding, July 1, 1897, found that only those Choctaws who had previ-

ous to July 1, 1897, settled in good faith in the Choctaw Nation were entitled to citizenship.

By special authority of an item in the Indian appropriation bill allowing an appeal from this decision, I shall on your behalf make an appeal to the Supreme Court of the United States to test the question of your rights.

In making up the roll of Mississippi Choctaws it is of the highest importance to furnish proof that each claimant is a descendant of a fourteenth-article claimant. For this reason I have secured the list of such claimants, and will make it available to my clients as soon as practicable.

The Dawes Commission will probably take evidence this fall and enroll all who are truly entitled.

Yours, very respectfully,

C. F. WINTON,
Newkirk, O. T.

December 2, 1898, the Dawes Commission, by printed circular notice and handbills, sent through the mails and posted in conspicuous places throughout the neighborhood in which the Choctaws in Mississippi resided, officially notified them of the time and places at which the commission would hear applications for identification under the Curtis Act, and explained in detail the steps necessary to procure identification thereunder, as per the following circular:

Notice.

To Mississippi Choctaw Indians:

The Dawes Commission has thought it necessary and proper to give definite information of the manner in which it will perform the duty of identifying Mississippi Choctaws, imposed upon it by the following provision of section 21, of the act of Congress, June 28, 1898:

"Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in Choctaw lands under article 14 of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, and to that end they may
327 administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior."

Section 14 of the treaty above referred to is as follows:

"Article XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States shall be permitted to do so, by signifying his intention to the agent, within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age, and a quarter section to each child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens

of the States for five years after the ratification of this treaty, in that case a grant in fee simple shall issue. Said reservation shall include the present improvement of the head of the family or a portion of it. Person who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not entitled to any portion of the Choctaw annuity."

It will be observed that the benefits extended under this article of the treaty are limited to Choctaw heads of families, who, within six months from the ratification of the treaty (Feb. 24, 1831), signified their intention to remain and become citizens of the States, together with their children therein mentioned. Proof showing a compliance with these provisions by applicants or their ancestors will be required in every case, and exhibits of records and documents, properly verified, showing these facts, will be received. No written pleadings, depositions, or affidavits, in any case, will be received or filed by the commission; but applicants or the head of each family desiring to be identified under said section of the treaty will be required to appear in person before the commission at one of its appointments for oral examination under oath, from which, and the documentary evidence above named, the commission will determine the identity of the applicants; and no further expense to applicant is necessary than to so appear before the commission with documentary evidence aforesaid. All expenses of the commission and of its work are paid by the Government, and no charge will be made against any person appearing before it.

The commission, in performing this duty, will not be accompanied or attended by anyone, outside of its own clerical assistants, in any degree authorized to speak for or act with it.

The commission is not authorized to enroll Mississippi Choctaws as Choctaw citizens. Its duty is to identify them as persons who come within the provisions of said article 14, and to make report thereof to the Secretary of the Interior, and Congress will doubtless make provisions for the rights of such persons to be determined by the courts. If such determination be in their favor they will then be enrolled and entitled to participate in the allotment of Choctaw lands.

TAMS BIXBY,
A. S. McKENNON,
T. B. NEEDLES,
Members of Commission.

Muscogee, Indian Territory, December 2, 1898.

328 XX.

Thereafter, in January, 1899, the Dawes Commission, through one of the commissioners, A. S. McKennon, proceeded to Mississippi, with several clerks and stenographers, and there identified and made up a schedule of 1,923 persons as being Mississippi Choctaws entitled to citizenship in the Choctaw Nation under the fourteenth article of said treaty. There were, according to the estimate of the commission, not more than 2,500 descendants of Choctaws who remained under

article 14 of the treaty of September 27, 1830, then living in Mississippi. The principle adopted in making this schedule was that proof of the fact that a claimant was a full-blood Indian, whose ancestors were living in Mississippi at the date of the treaty, was sufficient evidence to report his name as a Mississippi Choctaw under section 21 of the Curtis Act. This schedule, thereafter commonly known as the "McKennon roll," was subsequently approved by said commission, who forwarded the same with a report, dated March 10, 1899, to the Secretary of the Interior. Said schedule was never approved by the Secretary and was attempted to be withdrawn by the commission December 20, 1900, a duplicate copy of which having been retained in the Indian Office, and the same was formally disapproved by the Secretary March 1, 1907.

The work of Commissioner McKennon, covering a period of about three weeks, in identifying and making up said schedule, was interfered with and retarded by said Charles F. Winton, who endeavored to prevent the Indians from appearing for identification.

In the report of the Dawes Commission, dated March 10, 1899, to the Secretary of the Interior, transmitting said schedule prepared by Commissioner McKennon, it was said:

"The commission feels it a duty to report that contracts have been secured by white persons with almost every family for one-half of the lands and moneys which may be obtained by them, upon representation that their services are necessary to them in securing their rights. Such contracts are easily secured from these people, many of whom are so ignorant as to be able only with difficulty to give the names of the members of their families. Persons securing such contracts have done nothing whatever and can do nothing toward securing to these people any benefits accruing to them under the article of the treaty in question. Hon. John S. Williams, Member of Congress, in whose district in the State of Mississippi these Indians in most part reside, with the aid of the late Senator Walthall, has secured the legislation under which the commission is now acting, and their Congressman may be safely trusted to further look after their interests."

Charles F. Winton and one G. P. M. Turner, the latter then in the employ of James E. Arnold, one of the intervenors herein, were two of the white persons referred to in said report. Said Turner had previously sent out advertisements, in which he falsely represented himself as being connected with said commission.

Robert L. Owen furnished to Commissioner McKennon a list of of 16,000 Choctaw Indians which aided said McKennon in his official work. The list so furnished by Owen was prepared by him in 1889 in connection with his employment as an attorney at law in the case of the Choctaw Nation v. The United States, and was used as a part of the court record in the trial of said case.

329 XXI.

Shortly after transmitting the McKennon roll to the Secretary of the Interior as aforesaid, the Dawes Commission discovered that said

roll was very inaccurate, containing many names that should have been omitted and omitting the names of many Indians who should have been identified. Because of these facts another party was organized and sent out by the Dawes Commission for the purpose of making a more accurate and complete roll of the Mississippi Choctaws under the act of 1898. Hearings were commenced at Hattiesburg, Miss., in December, 1900, and were resumed at Meridian, Miss., April 1, 1901, from which time continuous sessions were held at Meridian and other places in Mississippi until the latter part of August of that year.

XXII.

February 7, 1900, said Winton and associates presented a memorial to Congress, praying that the treaty rights of the Mississippi Choctaws be so construed as to afford them the rights of Choctaw citizens without removal, or that they be permitted to have those rights determined in the courts. No action was taken by Congress upon this request.

XXIII.

April 4, 1900, said Winton and his associates memorialized Congress, requesting the following amendment to the Indian appropriation act then pending:

"Provided, That any Mississippi Choctaw duly identified and enrolled as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Mississippi Choctaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement they shall be enrolled by the Secretary of the Interior as Choctaws entitled to allotment."

The Indian appropriation act of May 31, 1900, contains the following proviso:

"Provided, That any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw and Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by such United States commission and by the Secretary of the Interior as Choctaws entitled to allotment.

"Provided further, That all contracts or agreements looking to the sale or encumbrance in any way of the lands to be allotted to said Mississippi Choctaws shall be null and void."

The last proviso was prepared by Mr. Williams and its passage secured by him, with assistance and cooperation of Senator Platt, they having been informed that a number of lawyers and other persons were securing contracts with the Mississippi Choctaws looking to the payment to them of certain shares of the prospective allotments to the Indians.

XXIV.

The Dawes Commission construed the provisions of the act of May 31, 1900, as prospective in its operation, and thereafter required from all applicants for enrollment proof of ancestry from Choctaw Indians who remained in Mississippi and received patents for lands under the fourteenth article of the treaty of 1830. This construction constituted a reversal of the principle previously adopted by the commission in making the so-called "McKennon roll," to wit: A presumption that the ancestors of full-blood Choctaws residing in Mississippi had fully complied with the technical requirements of article 14 of said treaty. It resulted that only six or seven persons claiming as Mississippi Choctaws were enrolled under the act of May 31, 1900, although there were from 6,000 to 8,000 applications filed in 1900 and the early part of 1901.

The Secretary of the Interior on August 26, 1899, directed the Dawes Commission to follow the full-blood rule of evidence recommended in the report of said commission dated March 10, 1899, in the identification of Mississippi Choctaws, and again on October 19, 1900, directed the said commission to follow that rule of evidence.

XXV.

June 13, 1900, the Choctaw Cotton Co. was organized and incorporated under the laws of West Virginia by said Winton and Owen, for the purpose of financing the removal of individual Mississippi Choctaws to the Indian Territory and there acquiring locations for them. Two-thirds of the capital stock of said company was issued to said Owen and one-third to said Winton. Subsequently all contracts theretofore taken by said Winton and his associates with individual Mississippi Choctaws were assigned to said Choctaw Cotton Co.

The said Choctaw Cotton Co. was, on the 7th day of August, 1911, dissolved and its charter annulled and surrendered by decree of the circuit court of Kanawha County, West Virginia, and such of the stock as was retained in the name of Owen and Winton has been filed in this court.

XXVI.

February 7, 1901, an agreement was made between the Dawes Commision and representatives on behalf of the Choctaw and Chickasaw Nations in the Indian Territory, which provided for the making up of the final rolls of all citizens and freedmen of the two nations upon which allotments of land and distribution of tribal property should be made. Section 13 of said agreement provided:

"13. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said commission, under the act of Congress approved June 28, 1898 (30 Stat. L., 495), and such full-blood Choctaw Indians residing in the State of Mississippi, and such full-blood Choctaw Indians as may have removed from the State of Mississippi to the Indian Territory,

as may be identified by said commission, shall alone constitute the 'Mississippi Choctaws,' entitled to benefits under this agreement."

This section, among others, was subsequently amended as a result of a conference between representatives of the Interior De-
331 partment, the Dawes Commission, and the two tribes, which was held for the purpose of perfecting the agreement as negotiated and avoiding delay in its ratification. Section 13 as amended reads as follows:

"13. All persons duly identified as Mississippi Choctaws by the Commission to the Five Civilized Tribes under the act of Congress approved June 28, 1898, the act of Congress approved May 31, 1900, may at any time prior to September 1, 1901, make bona fide settlement within the Choctaw-Chickasaw country, and on proof of such settlement to such commission, on or before December 31, 1901, may be enrolled by such commission as Mississippi Choctaws entitled to allotment, which enrollment shall be final when approved by the Secretary of the Interior."

The effect of this amendment was to strike out the recognition of the schedule contained in the so-called "McKennon roll" of March 10, 1899, which had not been officially approved and which roll the Dawes Commission had requested permission to withdraw, and also to eliminate the full-blood rule of evidence relating to Mississippi Choctaws, and to provide in lieu thereof for the identification of Mississippi Choctaws in accordance with the acts of Congress enumerated in the section as amended and for the enrollment of Mississippi Choctaws, conditioned upon their removal in the manner and within the time as therein specified. The agreement as thus amended was transmitted on February 23, 1901, to the House of Representatives by the Secretary of the Interior, with his recommendation for its ratification. Said agreement was not ratified, however, prior to the adjournment of Congress on the ensuing 4th of March.

XXVII.

April 1, 1901, the second party, referred to in Finding XXI, sent to Mississippi by the Dawes Commission for the purpose of making a complete and accurate roll of Mississippi Choctaws, resumed hearings at Meridian, Miss., and held continuous sessions there and at other places in Mississippi until the latter part of August, 1901. During these hearings and the making of this roll the conduct of said Winton and his associates and that of James B. Arnold and Louis P. Hudson increased the work of enrollment and impeded its progress. Being advised by said Owen, and believing that the roll made by Commissioner McKennon in 1899, referred to in Finding XX, was a finality and constituted a favorable judgment in behalf of the individual Mississippi Choctaws whose names appeared thereon, Winton and his associates advised all Indians who had previously been enrolled not to appear again before the commission for identification.

XXVIII.

June 20, 1901, said Winton, acting under advice of counsel, began taking new contracts and with individual Choctaws living in Mississippi in lieu of all previous contracts theretofore taken by him and his associates, as described in Finding X. These latter contracts in place of stipulating for one-half of the prospective allotments of said Indians provided for the payment of a sum of money equal to one-half of the value of the net recovery of or for said Indians in land, money, or money values, and, unlike said first-named contracts, further provided for the removal of said Mississippi Choctaws from their places of residence to the Choctaw Nation in the Indian Ter-
332 ritory. Said latter contracts were taken in a series numbered 1 to 834, beginning with the contract of the defendant, Jack Amos, and embraced about 2,000 persons. Said last-named contracts were also subsequently assigned to said Choctaw Cotton Co.

XXIX.

March 21, 1902, while preparation of the identification roll of Mississippi Choctaws was still in progress, an agreement was entered into between the Choctaw and Chickasaw Nations and the Dawes Commission, in which, by sections 41, 42, 43, and 44, it was proposed to fix the status of the Mississippi Choctaws. This agreement, after some amendments in Congress, was approved by act of Congress July 1, 1902, and ratified by the Choctaws and Chickasaws on September 25, 1902. (32 Stat., 641.) It was under this agreement, known as the "Choctaw-Chickasaw supplemental agreement," that practically all of the Mississippi Choctaws were enrolled and secured their right to allotments of Choctaw tribal lands. Section 41 of said agreement as originally signed by the Dawes Commission and representatives of the two nations reads as follows:

"41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the act of Congress approved June 28, 1898 (30 Stats., 495), as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, may, at any time within six months after the date of the final ratification of this agreement, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such commission within one year after the date of the final ratification of this agreement may be enrolled by such commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said commission after the date of the final ratification of this agreement."

April 24, 1902, a memorial by Winton and his associates was presented in the Senate in behalf of the full-blood Mississippi Choctaws,

which reviewed the prior legislation and prayed that the provisions of the supplemental agreement then pending should be amended so that the full-blood rule of evidence should be established and the Mississippi Choctaws be given time after identification to remove to the Choctaw country and longer time within which to make application. In this memorial it was stated:

"The unjust provisions and technical rules contained in sections 41, 42, 43, and 44 of the pending agreement were no doubt prepared by the attorneys representing the Choctaw and Chickasaw Nations with a view to barring out the pretenders who have attempted to secure enrollment in said nations by fraud. We do not blame but, on the other hand, commend all efforts of such attorneys to accomplish such a purpose; but we call attention to the fact that while attempting to accomplish this purpose the wording of the provisions is such that they unfortunately do a great injustice to a large number of full-blood Mississippi Choctaws who have already been
333 identified, as stated above, and who are entitled to enrollment."

The said memorial prayed that sections 41, 42, 43 and 44, which it was alleged imposed onerous conditions upon Mississippi Choctaws, should be struck out and a plain provision made as follows:

"41. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said commission under the provisions of the act of Congress approved June 28, 1898 (30 Stat. L., 495), and such full-blood Mississippi Choctaw Indians as may be identified by said commission, and the wives, children, and grandchildren of all such full-blood Choctaws, shall alone constitute the 'Mississippi Choctaws' entitled to benefits under this agreement.

"42. All 'Mississippi Choctaws,' as herein defined, who shall remove or may have removed to the lands of the Choctaw and Chickasaw tribes within twelve months after official notification of their identification shall be enrolled by said commission upon a separate roll designated 'Mississippi Choctaws'; and lands equal in value to lands allotted to citizens of the Choctaw and Chickasaw tribes shall in like manner be selected and set apart for each of them. All such persons who reside upon the lands of the Choctaw and Chickasaw tribes for a period of one year after enrollment as above provided shall, upon proof of such bona fide residence, receive patents as provided in the Atoka agreement, and they shall hold the lands thus allotted to them as provided in the Atoka agreement for citizens of the Choctaw and Chickasaw tribes, and be treated in all respects as other Choctaws."

Senator Harris, at the request of said Owen, introduced an amendment embodying the foregoing statements from the memorial, which was submitted to the Department of the Interior and was adversely reported upon.

Section 41 was subsequently amended during the ensuing debate

in the House and Senate, and as finally enacted reads as follows, the amendments adopted being indicated by italics:

"41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the act of Congress approved June 28, 1898 (30 Stat., 495), as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, may, at any time within six months after the date of *their identification as Mississippi Choctaws by the said commission*, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such commission within one year after the date of the said identification as Mississippi Choctaws shall be enrolled by such commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said commission after *six months subsequent to the date of the final ratification of this agreement and in the disposition of such applications all full-blood Mississippi Choctaw Indians and the descendants of any Mis-*
334 *sissippi Choctaw Indians, whether of full or mixed blood, who received a patent to land under the said fourteenth article of the said treaty of 1830 who had not moved to and made bona fide settlement in the Choctaw-Chickasaw country prior to June 28, 1898, shall be deemed to be Mississippi Choctaws entitled to benefits under article 14 of the said treaty of September 27, 1830, and to identification as such by said commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full blood or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation. All of said Mississippi Choctaws so enrolled by said commission shall be upon a separate roll."*

The rule of evidence that all full-blood Choctaws who had not removed to and made bona fide settlement in the Choctaw-Chickasaw country prior to June 28, 1898, should be deemed to be Mississippi Choctaws entitled to benefits under article 14 of the treaty of September 27, 1830, and identified as such by the Dawes Commission, incorporated in section 41 of the act of July 1, 1902, was introduced as an amendment to the bill by Mr. Curtis, and was drafted by one McMurray, attorney for the Choctaw Nation, and Assistant Attorney General Van Devanter.

XXX.

The passage of the act of July 1, 1902, ratifying said supplemental agreement and amendments to sections 41 to 44, inclusive, was opposed by Owen and the associates of Winton, who protested against the conditions contained in said amended sections relating to said Mississippi Choctaws as finally adopted.

The Indian appropriation act of March 3, 1903 (32 Stat., 982, 987), contained the following provision:

"That the sum of twenty thousand dollars, or so much thereof as is necessary, is hereby appropriated, to be immediately available, for the purpose of aiding indigent and identified full-blood Mississippi Choctaws to remove to the Indian Territory, to be expended at the discretion and under the direction of the Secretary of the Interior."

The special disburing agent of the Dawes Commission was thereafter sent to Mississippi to carry out the provisions of this act. Said agent there organized parties and assembled all said Indians that could be found and induced to come at Meridian, Miss., from whence they were later transported in two parties by special trains to Indian Territory, where they were further maintained until subsequently placed upon allotments and supplied with tools, other equipment, and rations for six months, all the expenses thereof being paid by the United States. The total number of said Indians thus transported, maintained, and equipped at the expense of the United States was 420.

XXXI.

The act of April 26, 1906, entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes of the Indian Territory, and for other purposes," contains the following:

"Sec. 2. That for ninety days after approval hereof applications shall be received for enrollment of children who were minors
335 living March fourth, nineteen hundred and six, whose parents have been enrolled as members of the Choctaw, Chickasaw, Cherokee, or Creek Tribes or have applications for enrollment pending at the approval hereof, and for the purpose of enrollment under this section illegitimate children shall take the status of the mother, and allotments shall be made to children so enrolled.

"Sec. 21.

* * * * * * *

"That heirs of deceased Mississippi Choctaws who died before making proof of removal to and settlement in the Choctaw country and within the period prescribed by law for making such proof may, within sixty days from the passage of this act, appear before the Commissioner to the Five Civilized Tribes and make such proof as would be required if made by such deceased Mississippi Choctaws; and the decision of the Commission to the Five Civilized Tribes shall be final therein, and no appeal therefrom shall be allowed." (34 Stat., 137, 145.)

One hundred and eighty-seven full-blood Mississippi Choctaws were enrolled under the provisions of section 2 of the above act.

XXXII.

The Dawes Commission received applications from approximately 25,000 persons for enrollment as Mississippi Choctaws. Of this

number 2,534 wer identified by the commission, but of the persons so identified 956 failed to remove to Indian Territory or submit proof of their removal and settlement within the time required by law. The total number of applicants identified and finally enrolled and who have received allotments as members of the Choctaw Nation is 1,578, of whom only 833 appear on the roll of March 10, 1899, and of whom only 696 had contracts with Winton and his associates; 181 Mississippi Choctaw Indians had voluntarily removed to the Territory in 1889 and were received into the Choctaw Nation. They were carried on the rolls as Mississippi Choctaw Indians, making the total enrollment of 1,759. The 181 Indians heretofore mentioned are not parties defendant to this proceeding.

The funds derived from sales of allotted lands of enrolled Mississippi Choctaws, subject to the restrictions upon alienation prescribed by section 1 of the act of May 27, 1908 (35 Stat., 312), are held by the Government to the credit of the individual Indians entitled thereto. All other funds belonging to said enrolled Mississippi Choctaws are held as tribal funds, the names of said Mississippi Choctaws being carried on a separate roll.

XXXIII.

The Estate of Chester Howe.

1. Chester Howe, deceased, was for many years an attorney and counsellor at law, a resident of the Territory of Oklahoma, and a practitioner therein. In 1896 he removed his office and place of practice to Washington, D. C., where he continued to reside until his death, which occurred October 1, 1908, while on a visit to Oklahoma.

336 2. In the early part of the year 1899 said Howe, by virtue of an oral agreement made with Louis P. Hudson, acquired an undivided one-third interest in all contracts taken by said Hudson and Arnold for the firm of Hudson & Arnold, with individual Mississippi Choctaw claimants, the purpose of said contracts being to secure the rights of said Mississippi Choctaws to allotments of tribal lands of the Choctaw Nation and to remove said Indians to the Indian Territory.

The said interest thus acquired by said Howe included approximately 465 contracts with individual Mississippi Choctaw claimants taken by L. P. Hudson and J. E. Arnold, or the firm of Hudson & Arnold, prior to the dissolution of said firm, in the month of August, 1901.

3. The services contemplated by said agreement to be rendered by said Howe were legal services before Congress and the Interior Department in representing and protecting the interests of said Indians and establishing their rights in and to lands in the Choctaw Nation.

4. Large sums of money were borrowed by said Arnold and said Hudson from various persons on account of said contracts with said individual Mississippi Choctaw claimants, the amount of which is not

disclosed, for which said Hudson and said Arnold failed to account to said Howe for any part thereof. Because of this fact said Howe became greatly dissatisfied in the spring of 1902 with the Mississippi Choctaw business and decided to withdraw therefrom, and notified his correspondents accordingly. Thereupon about May 12, 1902, said Arnold went to Washington and on that date procured the further assistance of said Howe by the acknowledgment, in writing, of the agreement previously made by Hudson with Howe that the latter should receive one-third of the fees in the Hudson and Arnold contracts; and also by signing an agreement authorizing the employment of J. H. Ralston, of the firm of Ralston & Siddons, to assist said Howe. Thereafter, in May, 1902, Howe employed the firm of Ralston & Siddons to assist him in securing the rights of said Mississippi Choctaw applicants, upon a contingent fee of $[illegible]000, to be paid in sums of $250 or more by Howe out of his own fees as fast as the same could be collected, the amounts thus collected to be evenly divided between said firm of Ralston & Siddons and said Howe until the fee should be paid.

5. Between the months of December, 1900, and July 1, 1902, said Howe was actively engaged in pressing the claims of certain Mississippi Choctaws with whom J. E. Arnold and others had individual contracts to allotable shares of lands and money of the Choctaw Nation upon individual Congressmen and Senators, the Subcommittee on Indian Affairs of the House of Representatives, the officials of the Indian Office, and the Secretary of the Interior.

It is not established by the evidence, however, that the legal services rendered by Howe were effective in establishing the claim of said Mississippi Choctaws to citizenship in the Choctaw Nation, or that such legislation as was enacted, and under which Mississippi Choctaws received allotments in the tribal lands of said Choctaw Nation, was the result of his professional services.

337 XXXIV.

Ralston & Siddons.

1. In May, 1902, the firm of Ralston & Siddons received and accepted the following offer of employment from Chester Howe:

WASHINGTON, D. C., May 16, 1902.

Messrs. Ralston & Siddons, Washington, D. C.

GENTLEMEN: I have an undivided one-third interest in certain contracts made with Mississippi Choctaw Indians residing in Mississippi which are deposited in the First National Bank at Ardmore, Indian Territory, and I hereunto attach a list of the names of said parties, which was forwarded to me by Mr. L. P. Hudson, who took the contracts.

For and in consideration of your services in assisting me to secure the rights of these parties I hereby agree to pay you the sum of $5,000, contingent upon the securing to these parties their rights in

the Choctaw Nation in the Indian Territory, and to be paid to you in sums of $250 or more as fast as the same can be collected from the parties, my agreement being that I will divide the amount collected evenly with you until the amount of this fee is paid.

I will make any additional contract necessary to carry out the letter and spirit of this agreement.

Yours,

(Signed) CHESTER HOWE.

The contracts thus referred to in the above letter were the same contracts in which the intervenor James E. Arnold conveyed a one-third interest to Chester Howe by assignment dated May 23, 1901, and acknowledged May 12, 1902, referred to in finding 4, estate of Chester Howe.

2. In accordance with the terms of said agreement the firm of Ralston & Siddons thereafter conferred with and assisted said Howe in securing data and preparing arguments pertaining to the claims of Mississippi Choctaws before the Interior Department, and on two occasions in 1902, prior to the passage of the act of July 1, the senior member of said firm appeared with said Howe before the Senate Committee on Indian Affairs—once before the whole committee and once before a subcommittee—for the purpose of securing relief for Mississippi Choctaws, in legislation then pending.

3. Said intervening claimants, Ralston & Siddons, have not received any compensation directly or otherwise for their services and expenses in this matter.

XXXV.

James E. Arnold and Louis P. Hudson.

1. In the year 1898, some time after the passage of the Curtis Act of June 28, 1898, James E. Arnold, who was himself an applicant for citizenship in the Choctaw Nation, went to Mississippi and procured from a number of individual Indians residing there contracts to secure their rights as members of the Choctaw Nation for a consideration of one-half the lands and moneys that might thereafter be allotted to them.

338 Said Arnold employed one G. P. M. Turner, an attorney at law residing at Muskogee, Okla., to assist him in securing said contracts, and later accompanied said Turner to Mississippi, where they jointly produced at the hearings there, held by Commissioner McKennon, a number of applicants and their witnesses for identification. Many of said applicants and their witnesses were brought from a distance by wagons, at the expense of Arnold, but the number of applicants whose names were placed upon the McKennon rolls is not established.

2. On or about January 1, 1899, said Arnold formed a general partnership with the intervenor, Louis P. Hudson, a practicing lawyer, at Ardmore, Okla., under the firm name of Hudson & Arnold, attorneys at law, for the purpose of engaging in Indian citizenship

business generally and also in the claims of Mississippi Choctaws for identification and enrollment as members of the Choctaw Nation.

3. Said Arnold was not an attorney at law and was never admitted to practice as such. He applied November 2, 1899, for permission to practice as an agent before the Interior Department, and was officially recognized June 8, 1901, as agent for claimants before the Dawes Commission.

4. On or about the 1st of July, 1899, said Hudson, for and in behalf of the firm of Hudson & Arnold, entered into the verbal agreement referred to in findings 2 and 3, Estate of Chester Howe, whereby said Howe agreed to represent Mississippi Choctaw claimants before Congress and the Interior Department for an undivided one-third interest of whatever fees were realized by said firm from said contracts.

5. Between the months of December, 1900, and August, 1901, said Hudson & Arnold secured in their joint names several hundred contracts with individual Mississippi Choctaw claimants living in the State of Mississippi, and with other persons living outside of Mississippi who claimed the rights of Mississippi Choctaws. Some 83 of these contracts purport to be signed by mark. In some of the said contracts for sums ranging from $50 to $250, paid to them by the claimants as retaining fees, and agreement to pay further sums for each member of the claimants' families thereafter placed upon the tribal rolls, said Hudson & Arnold undertook as attorneys and agents to represent said claimants before the Dawes Commission, the Interior Department, or any other tribunal of competent jurisdiction, and to render all legitimate assistance in their power to secure the enrollment and allotment of said claimants as members of the Choctaw Nation. Fees in excess of $30,000 were collected by said Hudson & Arnold under said contracts taken by them prior to August, 1901, from individual claimants. Less than 40 of the total number of persons purporting to have signed contracts were finally enrolled. No accounting was rendered by Hudson & Arnold to said Howe for any part thereof.

6. Throughout the hearings held by the Dawes Commission in Mississippi during the making of the second identification roll said Hudson & Arnold maintained offices in that State and were constantly engaged in the matter of securing contracts to represent individual applicants for enrollment and in bringing said applicants with their witnesses before the commission for identification. Many of said applicants and their witnesses were brought from a distance by wagons, at the expense of said Hudson & Arnold, who also furnished them board and lodging where necessary, pending the
339 hearings of their claims.

7. On the 19th of August, 1901, the partnership of Hudson & Arnold was dissolved by mutual consent, and thereafter each former partner continued separately in the business of securing Mississippi Choctaw claims—Arnold for himself and Hudson as an associate and equal partner of Chester Howe, under a continuation of the verbal agreement with Howe, referred to in finding 4. The subsequent activities of said Hudson in connection with the claims of

Mississippi Choctaws appear more fully in the findings relating to other intervenors hereinafter made.

8. On May 27, 1902, said Hudson was suspended from practice before the Dawes Commission, and on the 11th of July, 1903, after a trial at which he was represented by counsel, said Hudson was convicted of the charge of offering a worthless Mississippi Choctaw contract for sale and was disbarred from practice before the Department of the Interior and all of its bureaus.

9. Prior to the dissolution of the firm of Hudson & Arnold, beginning on or about April 1, 1901, and continuing thereafter until on or about April 1, 1903, said Arnold secured, in his own name upon three separate forms, contracts with approximately 638 individual Mississippi Choctaw applicants.

The contracts under the second form provided for the payment to Arnold of $250 as attorney's fees when the applicant was identified by said commission as a Mississippi Choctaw, and a further sum of $200 for each member of the family of said applicant when placed upon the tribal rolls and awarded an allotment. A majority of these contracts were made after the applicants had applied for identification, and the total number of said contracts secured by said Arnold was approximately 223, of which number 23 were signed with the name of the applicant and the remainder by mark, witnessed by the agents of said Arnold.

The contracts under the second form provided for the payment to Arnold of a cash retainer by each applicant from $100 to $250 and $100 additional for each member of the applicant's family when placed upon the tribal rolls. The total number of contracts secured by said Arnold upon this form was approximately 208, of which 175 purported to be signed with the name of the applicant and the remainder by mark, witnessed by the agents of said Arnold.

These contracts were with claimants to Choctaw citizenship, not claiming as Mississippi Choctaws living in Mississippi. The contracts taken as aforesaid under the second form were taken during the same period as the Mississippi Choctaw contracts under the first and third forms referred to in this paragraph. These contracts under the second form were with persons living chiefly in the Indian Territory.

The third form of said contract provided for the removal of the applicants by Arnold to the Indian Territory and stipulated for the payment to Arnold of a sum equal to one-half the value of all lands and moneys thereafter allotted or that might become due said Indians as members of the Choctaw-Chickasaw Nation, with the further stipulation that should the applicant refuse to pay, as therein provided, said Arnold should have possession of the land for a period of fifteen years, with the right to rent or lease the same and apply the proceeds to the payment of said debt. The total number of contracts secured by Arnold upon this form was approximately
340 237, of which 37 purported to be signed with the name of the applicant and the remainder by mark, witnessed by the agents of said Arnold.

10. In the fall of 1902 and subsequently said Arnold obtained

large sums of money from the sale and assignment of said contracts to various persons and from loans obtained on said contracts to aid in the removal and subsistence of said Indians covered by said contracts. The amount expended by said Arnold for such purpose and the number of said Indians actually removed by him to the Indian Territory who received final enrollment as Mississippi Choctaws is not satisfactorily established by the evidence.

11. On May 28, 1904, Arnold was disbarred from practice before the Interior Department, upon the charge of selling worthless contracts with enrolled Mississippi Choctaws, known to have been void under the provisions of the act of May 31, 1900, to one E. A. F. Whollenberg. He instituted mandamus proceedings in the Supreme Court of the District of Columbia to compel his reinstatement, and on March 9, 1911, while said proceedings were pending, he was reinstated by the Secretary of the Interior, as per terms of the following letter:

DEPARTMENT OF THE INTERIOR.
WASHINGTON, March 9, 1911.

Mr. James E. Arnold, c/o Ralston, Siddons & Richardson, Washington, D. C.

SIR: I have before me your petition for restoration to practice as an attorney or agent in the prosecution of claims or matters before this department or any bureau thereof, the department having disbarred you by order dated May 28, 1904.

I note that you state that since your said disbarment you have studied for the ministry and have been ordained a minister; that you expect within a few weeks to leave this country and to pursue your new avocation in Mexico, under appointment of the Home Mission Board of the Northern Baptist Conference, and that your disbarment constitutes an impediment which you desire to have removed.

Moved by consideration suggested by this change in your profession, I very cheerfuly accede to your request and have ordered that you be restored to practice as of and from this date. The heads of bureaus will be so notified.

Very respectfully,

(Signed) R. A. BALLINGER, *Secretary.*

XXXVI.

James S. Bounds, Attorney in Fact for T. A. Bounds.

1. James S. Bounds intervenes by petition filed in this case under the jurisdictional act of May 29, 1908, by virtue of a power of attorney dated February 22, 1908, from T. A. Bounds, authorizing said intervenor to represent said T. A. Bounds in all matters pertaining to the latter's claims against Mississippi Choctaw Indians.

2. On or about April 1, 1901, said T. A. Bounds, a farmer and cattleman residing at Wortham, Texas, went to Mississippi to engage

in the business of securing the identification and enrollment of Mississippi Choctaws.

341 For this purpose he employed, shortly after his arrival in Mississippi, the firm of Hudson & Arnold to obtain contracts for him with individual Mississippi Choctaw claimants, and agreed to pay said firm $50 for each contract thus secured.

Said Hudson & Arnold thereafter secured 70 contracts in the name of said Bounds with individual Mississippi Choctaw claimants, for which said Bounds paid said firm prior to August, 1901, the sum of $3,500.

Said contracts were similar in form and substance to the contracts hereinafter referred to in Finding 1, claim of William N. Vernon.

3. After securing the foregoing contracts, as aforesaid, said Bounds went to the Indian Territory and there acquired the possessory rights through the purchase of improvements upon certain lands to enable said Indians to obtain the prior right to allotments thereon.

4. Between the months of November, 1901, and July, 1903, said Bounds removed a number of Mississippi Choctaws from Mississippi to the Indian Territory, where they were subsequently enrolled upon the final approved rolls and received valuable allotments in the lands of the Choctaw Nation.

Said Bounds paid the expenses incident to the removal of said Indians from their former homes in Mississippi to the Indian Territory, including cost of their subsistence en route, clothing where necessary, and other incidental expenses, and upon arrival in the Indian Territory furnished said Indians food, shelter, and other necessities.

5. All of said Indians thus removed subsequently repudiated their contracts with said Bounds, and a majority of them accepted allotments upon lands other than those previously selected for them by said Bounds.

XXXVII.

William N. Vernon.

1. William N. Vernon, an attorney at law, residing at Rockwall, Tex., went to the State of Mississippi on or about September 1, 1902, for the purpose of engaging in the business of removing Mississippi Choctaws from that State to the Indian Territory.

Vernon had previously moved one Indian from Mississippi to the Indian Territory in September, 1901, and placed him in possession of an allotment upon which Vernon had theretofore acquired the right to file by the purchase of the improvements thereon.

Sixty separate contracts were secured by Vernon with individual Mississippi Choctaw claimants, whereby the Indians in consideration of services rendered and to be rendered by Vernon, in establishing their rights as members of the Choctaw tribe and providing for their removal to the Indian Territory, agreed to pay said Vernon a sum equal to one-half of the value of all lands allotted to them, also one-

half of all timber thereon, and one-half of all moneys, including annuities, due or thereafter to become due, as members of said tribe.

Said Indians further agreed, upon the allotment of said lands, to lease the same with full power of control to Vernon for a period of five years, and to confer upon him the right to fence, clear, improve, lease, occupy, and rent said lands or any part thereof and market the minerals or products of the soil, for a period not exceeding five
342 years, applying the proceeds derived therefrom to the payments due said Vernon under the terms of said contracts.

2. Prior to September 1, 1902, said Vernon had spent considerable time and some money in ascertaining what lands could be obtained in the Choctaw Nation for the benefit and use of the Mississippi Choctaws, and had further obtained by the purchase of improvements thereon the possessory rights to said lands, so that said Indians might secure allotments thereon.

3. Between the months of September, 1902, and March, 1903, when he abandoned the project because of the provision made by the Government for the removal of Mississippi Choctaws by the act of March 3, 1903, said Vernon moved from Mississippi to the Indian Territory 60 Indians, who were subsequently enrolled on the final approved rolls of the Choctaw Nation; paid all of the expenses incident to their removal, including the cost of their subsistence en route, clothing, medicines, and other incidental expenses; and upon their arrival in the Indian Territory provided said Indians food, shelter, and other necessities, and placed them upon lands the possessory rights to which had been previously acquired by him, as aforesaid, and thereafter said Vernon further assisted each of said Indians until their respective allotments were obtained.

4. Said Vernon, after the lands were allotted, took individual leases from said Indians for terms ranging from two to five years to reimburse himself for expenses incurred in their behalf, and held the same until he was subsequently dispossessed therefrom.

The amount expended by said Vernon in conducting the removal and settlement of said Indians, as aforesaid, and the sums received by him from the proceeds of the leases taken from said Indians, are not established to the satisfaction of the court.

XXXVIII.

Joseph W. Gillett.

1. In the month of May, 1902, the intervenor, Joseph W. Gillett, a banker, then residing in Woodbine, Kans., visited the Indian Territory, and there entered into the following agreement with the intervenor, Louis P. Hudson:

Rovv, I. T., May 31, 1902.

"This contract made and entered into this 31st day of May, A. D. 1902, witnesseth that L. P. Hudson, party of the first part, hereby sells, transfers, delivers to J. W. Gillett, of Woodbine, Kans., contracts with twenty Mississippi Choctaw Indians, said contracts being

with the heads of families, and for a fee equal to one-half the value of the land received by them in Choctaw or Chickasaw Nations, said contracts being this day delivered to the said party of the second part, and in consideration of the delivery of said contracts and the agreement therein contained the party of the second part, agrees to place on deposit in the First National Bank of Roff, I. T., on this date, the sum of five hundred dollars, and on the 15th day of October, 1902, five hundred dollars, and when said Indians are brought to the Indian Territory and located on the lands selected by the parties to this contract and to the satisfaction of the party of the second part, the further sum of one thousand dollars; said sum of money to be and
343 remain in the custody of the said bank until said Indians secure title to said lands, and transfer one-half of the same, over and above their homestead, one hundred and sixty acres, to J. W. Gillett, one of the parties to this contract; said transfer to be made within four years of this date, or as soon as said Indian can legally transfer same. And when said transfer is completed and a good and sufficient title is made to the said J. W. Gillett all of said money is to be turned over to L. P. Hudson, and no part hereof is to be paid to the said L. P. Hudson prior to securing of said title, except the sum of three hundred dollars, which is to be used for the purpose of moving the said Indians from Mississippi to the said Indian Territory, or such part of the said sum of three hundred dollars as may be actually necessary for the purpose named herein.

"The party of the first part agrees that if any of said Indians dies before allotment that the contract made by said Indian shall be replaced by one equally as good; and when said title is complete the party of the second part agrees to pay the party of the first part the further sum of two thousand dollars, making a sum total of four thousand dollars ($4,000.00).

"And if title ever comes to party of the first part through these contracts the same is to revert to the party of the second part, and if for any reason the Indians named in the contract fail to secure title to the said land or fail to transfer the same to the parties to this contract, the sum of money deposited or paid by the party of the second part are to be refunded to him by the First National Bank of Roff, custodian thereof."

2. August 22, 1902, a further contract was made between said Hudson and Gillett as follows:

"This contract, made and entered into this 22d day of August, 1902, witnesseth that L. P. Hudson, party of the first part, hereby sells, transfers, delivers to J. W. Gillett, of Woodbine, Kansas, party of the second party, contracts with nineteen (19) Mississippi full-blood Choctaw Indians; said contracts being made with heads of families, and for a fee equal to half (½) the value of the land and money received by them in the Choctaw and Chickasaw Nations, said contracts being this day delivered to the said party of the second part, and in the consideration of the delivery of the nineteen Indian contracts and the agreement therein contained the party of the second part pays the said first party the sum of nineteen hundred dollars ($1,900), the receipt of which is hereby acknowledged.

"And the said first party agrees to bring without cost to second party the said nineteen Indians from Mississippi and locate them on land in the Indian Territory selected by the parties to this contract to the satisfaction of the party of the second part.

"And when the said nineteen Indians transfer to the said J. W. Gillett half (½) of their allotment of land and money, and when said transfer is complete and a good and sufficient title is made to the said J. W. Gillett, the said J. W. Gillett agrees to pay to L. P. Hudson the further sum of nineteen hundred dollars ($1,900).

"The party of the first part further agrees that if any one or more of said Indians die before allotment, that the contract or contracts made with said Indians shall be replaced by one equally as good, and if title ever comes to party of the first part through these contracts the same is to revert to the said second party.

"And if for any reason the Indians named in the contract fail to secure title to the said land and money or fail to transfer same
344 to parties to this contract, the sum of all money paid the said L. P. Hudson, party of the first part, by the said J. W. Gillett, party of the second part, is to be repaid the said J. W. Gillett, party of the second part, by the said L. P. Hudson, party of the first part."

3. Said Hudson subsequently removed from Mississippi and delivered to said Gillett in the Choctaw Nation 22 Mississippi Choctaw Indians, for which said Gillett paid Hudson the sum of $100 for each Indian thus delivered and $25 each additional to cover the cost of removal.

Said Hudson had previously assigned and delivered to said Gillett his original attorney's contracts with said Indians, which were similar in form and substance to the contract hereinbefore set out in finding 1 of the Vernon claim.

4. During the months of January and February, 1903, Gillett secured additional contracts in similar form in his own name in Mississippi with various individual Mississippi Choctaw claimants, some of whom had been previously identified, and removed them to the Indian Territory.

Said Gillett thereafter maintained said Indians, including those delivered to him by said Hudson, in said Territory, secured by the purchase of improvements, valuable land upon which they might allot, assisted them in the matter of allotment, furnished supplies, clothing, tools, etc., and otherwise assisted said Indians to comply with the terms of the act of July 1, 1902, requiring their settlement and continual residence in that country.

5. The said Gillett took leases from nearly all of the Mississippi Choctaws with whom he had contracts for their allotments of 320 acres each, and agreed to pay them not less than $100 per annum for each allotment. The average rent per annum of the cultivated lands for the first year was $2 per annum and of the grazing lands 50 cents per annum. The proportion of cultivated land in these allotments when he took the leases was not over 10 per cent, for the second year 20 per cent, and for the third year about 35 per cent. He or his

assignees were in possession of most of these allotments on October 16, 1907, when testimony on his claim was taken.

XXXIX.

Choctaw-Chickasaw Lands and Development Co.

1. July 7, 1903, Chester Howe, in his own behalf and as attorney in fact for Louis P. Hudson, entered into an agreement with four individuals therein named, whereby Howe agreed to turn over to such individuals 51/100 of an interest in all contracts theretofore taken with 100 Choctaw Indians to secure the removal and allotment of said Indians in the Indian Territory. The individuals named agreed upon their part to form a corporation, to be known as the Choctaw-Chickasaw Lands and Development Co., and to furnish money, estimated at $15,000, to carry out the agreement. The capital stock of the corporation was fixed at not less than $100,000, of which Howe and Hudson were to receive 49 per cent, and it was agreed that upon the organization of the company all rights of the parties thereto were to be legally conveyed to the company.

2. The corporation was thereafter organized under the laws of Delaware. In accordance with the foregoing agreement, sub-
345 scriptions to the capital stock aggregating $3,525 were obtained, only a portion of which, however, was paid in cash.

3. From subscriptions thus obtained and advances made by individual stockholders said company erected during the summer of 1903 fifteen wooden cottages or shacks, at a cost, including furniture, of approximately $55 to $60 each, near the town of Roff, in the Indian Territory, and expended various other sums in preparing accommodations for the Indians which the company expected thereafter to move from Mississippi, in accordance with the contracts theretofore made with said Indians by said Howe and Hudson.

4. Said company failed, however, to effect the removal of any Mississippi Choctaws entitled to allotment to the Indian Territory, and several months after the arrival in the Territory of the Indians who were moved there by the Government said company abandoned the entire enterprise.

XL.

J. J. Beckham.

1. In the summer of 1901 J. J. Beckham and R. J. Ellington, residing in Mexia, Tex., entered into a partnership agreement for the purpose of engaging in the business of securing the identification and allotment of lands to Mississippi Choctaws in the Indian Territory. Under the terms of said partnership said Beckham agreed to furnish the money and Ellington the time and labor required for the enterprise, and the proceeds were to be divided equally between them.

2. After the passage of the act of July 1, 1902, said Beckham, in accordance with the foregoing agreement, furnished money, which

was used to assist 15 Mississippi Choctaws, more or less, in the State of Mississippi, to appear before the Dawes Commission for identification.

3. In July, 1903, said Ellington transported to the Choctaw Nation and subsisted en route, with funds furnished by said Beckham, nine Mississippi Choctaws, from whom Ellington had previously secured separate contracts similar in form and substance as those set out in the finds of the Vernon claim.

4. Shortly thereafter said Ellington became dissatisfied with the enterprise and conveyed by an assignment in writing his entire interest therein for a nominal consideration to said Beckham, who, after the arrival of said Indians in the Choctaw Nation and for a period of about six months, furnished them supplies, when said Indians voluntarily left the care and protection of said Beckham and repudiated their contracts with him.

5. The Indians were located on segregated lands, not subject to allotment, by Ellington and Beckham, who expected to reimburse themselves for the expenses of removal by leasing their allotments. After the assignment by Ellington of his interest to Beckham the improvements were leased by Beckham to third parties for one year, for which he received $600. They were then turned over to one Sam Downing, who was to get what he could for them for the benefit of the Indians, and Beckham took Downing's note for the consideration, after which Beckham got completely out of the business, and does not know whether Downing was thereafter paid for the improvements. Most of these Indians were afterwards enrolled and allotted by the Dawes Commission.

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XLI.

David C. McCalib.

1. On or about April 1, 1903, the intervenor, David C. McCalib, a practicing physician, then residing at Callero, in the Indian Territory, purchased from one W. H. Gallaspy, an attorney of Hickory, Miss., for the sum of $12,000, more or less, all the latter's interest in and to certain contracts and powers of attorney with 103 enrolled Mississippi Choctaws whom Gallaspy had moved the previous month from their homes in Mississippi to Callero in said Territory.

2. Said contracts provided for the payment of a contingent fee equal to one-half of the value of the recovery in lands and money of said Indians, and also that said Gallaspy might associate with him any other person or persons and assign such rights under said contracts as he deemed necessary to secure the performance of his duties and obligations thereunder, and that said contracts should be regarded as having been made for the benefit of such other persons.

3. Said Gallaspy for the further sum of approximately $2,600 transferred and assigned his accounts for expenses and advances theretofore made against certain individual Indians to said McCalib, who thereupon assumed and undertook the completion of the services provided for in said contracts.

4. Shortly thereafter said McCalib sold and transferred 20 of said contracts to one J. H. Holland for the sum of $5,000, more or less.

5. Immediately after acquiring the interest of said Gallaspy in said contracts and upon the Indians producing their identification papers, said McCalib proceeded to assist said Indians to secure their rights by maintaining them in the Choctaw Nation, furnishing them supplies and subsistence when needed, securing them the right to allotted lands by the purchase of title to improvements, building them houses, furnishing them medical attention, etc., for all of which said McCalib expended various sums.

6. Said McCalib secured from each of said Indians leases of the lands filed upon for allotment for a period of five years at an annual rental of $65 for each allotment, but finding the business unprofitable, said McCalib in 1906 abandoned the entire enterprise, including said contracts, and removed from the Territory. Said McCalib has received no compensation for his services or expenses in this matter, and the contracts filed by him show that more than one-half of the Indians against whom his claim is made were under contract with Charles F. Winton, James E. Arnold, and others, and that the said Gallaspy was representing said Indians in the prosecution of their claims to citizenship in the Choctaw Nation at the same time they were also being represented in the same matter by said Charles F. Winton and others.

XLII.

Madison M. Lindly, Walter S. Field, and John London.

1. In 1896 and prior thereto Madison M. Lindly was an attorney at law residing at South McAlester, Ind. T.; Walter S. Field was an attorney at law residing at Oklahoma City; and John London was an attorney at law residing at Alma, Ark.

347 2. The claims of Walter S. Field, M. M. Lindly, and John London are predicated upon an alleged association with Chester A. Howe, James E. Arnold and Louis P. Hudson.

3. M. M. Lindly filed his first petition May 7, 1909, claiming then in his own right the sum of $200 for services rendered and expenses incurred in behalf of the Mississippi Choctaws and gave his testimony in support of the same. On May 17, 1909, Lindly filed a second intervening petition, for the first time alleging an association as set forth in the second paragraph of this finding. In his second deposition he supports the allegations of his second petition.

4. On June 9, 1910, Walter S. Field filed his intervening petition herein, having theretofore acted either as attorney at law or attorney in fact for M. M. Lindly, William N. Vernon and T. A. Bounds, all of whom have intervened herein.

5. On February 19, 1912, John London filed his intervening petition herein and shortly thereafter gave his deposition in support thereof.

6. It appears from the record that in the fall of 1896 Lindly or Field (which one not definitely shown) drafted a contract in form to

comply with section 2103, Revised Statutes; accompanying the contract drafted in triplicate were three authorizations, by the terms of which certain bands or headmen of the Mississippi Choctaw Indians were to be commissioned by the tribes as their representatives to execute the above band or tribal contract. This band or tribal contract was to be in favor of M. M. Lindly, the spaces for the parties signatory thereto being left in blank. In June, 1897, the formal band contract with the formal authorizations heretofore mentioned was delivered to John London by M. M. Lindly in his office at S. McAlester, Okla. London was to take the same, proceed to Meridian, Miss., and there meet James E. Arnold and procure its proper execution, Lindly at the time advancing to said London $42 expense money. London accepted the employment, proceeded to Meridian, Miss., but never did meet James E. Arnold. A few days thereafter London, in company with a sewing-machine agent and furniture peddler, together with a colored interpreter, visited various localities in Mississippi inhabited by Mississippi Choctaw Indians. He found no organized tribes or band of Mississippi Choctaw Indians, but did secure the individual signatures to said contract of one W. E. Riley, a relative of London's wife, and an Indian preacher, Ben Hottubee. London then returned to his home at Alma, Ark., and some time after his return received by mail a return of the said contract purporting to be signed by either seven or nine individual Mississippi Choctaw Indians. London afterwards delivered the contract to Lindly, and Lindly at some date in 1898 delivered it to Walter S. Field, and he in turn delivered it to Chester A. Howe in Washington. What finally became of the contract is not shown to the satisfaction of the court. By whom or when it was lost does not appear. The contents of the contract, the identity of the Indians signing the same, as well as the acknowledgment and proper execution of the same does not appear to the satisfaction of the court. There were no tribes, bands or headmen among the Choctaw Indians of Mississippi and the contract as signed was not a band or tribal contract.

7. On a date subsequent to or late in the year 1898 a written document purporting to be a contract with the Mississippi Choctaw
348 Indians was informally left with the Commissioner of Indian Affairs at his office in Washington. The same was never filed, and after the lapse of more than a year was refused approval by the commissioner because of an alleged absence of jurisdiction to consider the approval of the same. Whether this document was the identical paper—the so-called band contract—delivered by Lindly to Field does not appear and the authenticity of the same is not established to the satisfaction of the court.

8. What contractual relationship existed between Lindly, Field, London, James E. Arnold, and Louis P. Hudson is not shown. It does appear that Lindly and Field had some business connection with Chester A. Howe, either as attorney and client or employees of Howe, to which the Mississippi Choctaw Indians were not a party. The record discloses that Walter S. Field had no contract, either band or individual, with any Mississippi Choctaw Indians. His name does not appear on any brief filed before any committee of Congress, the

Dawes Commission, the Indian Office, or before any court considering their claims to citizenship in the Choctaw Nation. No authority from the Mississippi Choctaw Indians appears for Fields' activity in their behalf, and whatever services he performed in their behalf was without their knowledge or acquiescence in the same.

9. John London's relationship to Lindly was that of an employee engaged to perform specified services for an agreed portion, less expenses, of whatever fees might accrue to Lindly from such contracts as London might procure to represent the individual Mississippi Choctaw Indians. London was in nowise associated or connected in the matter of the claim of Chester A. Howe or Walter S. Field.

10. The identity of individual claimants resident in Mississippi or elsewhere who employed said Lindly prior to May 31, 1900, or thereafter, to represent them in asserting their claims to citizenship and who were subsequently enrolled, if any, in the Choctaw Nation, is not established.

11. Nor is the fact established that said Lindly employed the interveners James E. Arnold or Louis P. Hudson to secure contracts for him with individual Mississippi Choctaw claimants, or that contracts were ever taken by said Arnold or Hudson as agents for said Lindly, Field, or Howe.

12. Walter S. Field was active in intervening and otherwise impressing upon some individual Congressmen and United States Senators his views as to the necessary and proper legislation for the procurement of the rights of the Mississippi Choctaw Indians to citizenship in the Choctaw Nation. The extent and effect of said service does not appear, nor does it appear that the legislation finally enacted was the result of said interviews or service.

13. No express copartnership is shown to the satisfaction of the court to have existed between Field, Lindly, and Howe to which London, James E. Arnold, and Louis P. Hudson were silent partners by oral agreement.

XLIII.

Thomas B. Sullivan and Joseph H. Neill.

1. In the spring of 1897 Thomas B. Sullivan, a practicing attor-
ney, and Joseph H. Neill, a merchant, both residing at Ca-
349 thage, Miss., were jointly employed under verbal agreement
by Charles F. Winton, to assist him to secure contracts in Mississippi with Choctaw claimants, for a consideration of a one-fourth interest in said Winton's share of the recovery under said contracts.

2. Said Sullivan and Neill thereafter and until May, 1903, secured a number of said contracts for said Winton in the joint names of Winton and his associates, Owen, Daley, and Logan, and also co-operated with and assisted said Winton in bringing said Indians and their witnesses before Commissioner McKennon for identification and enrollment at the hearing conducted by him in Mississippi in 1899.

3. May 6, 1901, said Winton, for the purpose of reducing the terms and conditions of said verbal agreement to written form, entered into the following contract with said Sullivan and Neill, which was duly executed by the parties hereto:

STATE OF MISSISSIPPI,
Leake County:

May the 6, 1901.

This agreement witnesseth, That for and in consideration of services rendered and to be rendered in securing contracts with the Mississippi Choctaws, and in securing the counsel and consent of the Mississippi Choctaws to agree to accept Walter S. Logan, Charles S. Daley, Robt. L. Owen, and C. F. Winton as counsel before the U. S. Congress, Indian Territory, before the Dawes Commission, and in all things in securing their rights and property, identification and enrollment in the Choctaw Chickasaw Nation, I, Charles F. Winton, party of the first, do hereby agree with T. B. Sullivan and J. H. Neill, party of the second part, to pay over to him the sum of money equal to one-fourth (¼) part of my net interest in said contracts, counsel fees, manual and legal services, and all or any other labor, legal or otherwise, needed to be performed in the State of Mississippi pertaining to said Mississippi Choctaws. The said interest to be paid immediately after the recovery by me of such interest in the same proportion as I receive the same.

It being understood and agreed that the party of the first part is to provide for the raising of the means for moving said Choctaws and assisting them in selecting, locating, and renting lands to which they are entitled in the Indian Territory. And T. B. Sullivan and J. H. Neill, party of the second part, in consideration of these presents, hereby agrees to use his good offices and to make active efforts in securing consent and co-operation of the Mississippi Choctaws with Charles S. Daley, C. F. Winton, et al., and in securing contracts with said Mississippi Choctaws, and in influencing the Indians to co-operate in good faith and good spirits in perfecting and fulfilling the contracts aforesaid. And the party of the second part further agrees to assist in doing such acts as are necessary under law to obtain and make valuable the estate to which the said Mississippi Choctaws are entitled.

In witness whereof we have hereunto set our hands and seals on the sixth day of May, 1901, at Carthage, in the State of Mississippi.

C. F. WINTON. [SEAL.]
T. B. SULLIVAN. [SEAL.]
J. H. NEILL. [SEAL.]

350 4. In the course of their employment said Sullivan and Neill, by direction of Winton, conducted 36 proceedings before the chancery court in Mississippi for the appointment of guardians of minor and incompetent Indians with whom Winton desired to contract.

5. During the month of March, 1903, said Sullivan and Neill, in

further pursuance of their said employment, moved 22 Mississippi Choctaws from Mississippi to the Indian Territory and were reimbursed the amount of their expenses by Robert L. Owen.

6. Said Sullivan and Neill have not received any compensation directly or indirectly for their services or expenses in this matter.

XLIV.

One Alfred J. Lee, a citizen of Oklahoma, on December 15, 1911, recovered six judgments aggregating $5,105 against each of six Mississippi Choctaws in the district court of Carter, Okla., for alleged services in securing a provision in the act of April 26, 1906, a part of the same legislation for which claim has been made in this suit, and against some of the Mississippi Choctaws with whom the claimants in this suit claim to have contracts.

XLV.

The petitions and intervening petitions of Melvin D. Shaw, James O. Poole, and John W. Towles have not been sustained by any competent evidence in the record, and no findings have been made with reference to said claims.

XLVI.

In answer to a call by this court the Secretary of the Interior, on May 18, 1907, transmitted a schedule showing the lands selected in allotment by enrolled Mississippi Choctaws, which shows the names of the several Mississippi Choctaws enrolled, with the names and a description of the lands allotted as homestead and lands exclusive of homestead to them, respectively, together with the identified number and the roll number of each. The identified number and the roll number are not the same. To illustrate: The roll number of Mary Jane Jefferson is 1419 and her identified number is 2515. Included in said list of persons to whom lands were allotted as homestead and also exclusive of homestead are the names of 137 persons designated as "New Born Mississippi Choctaws," their roll numbers being from 1 to 137, inclusive. The total number to whom allotments were made was 1,578. The total number of persons identified as Mississippi Choctaws was 2,534. Some of those identified were therefore never enrolled.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that each of the several petitions and intervening petitions herein be, and the same are hereby, dismissed.

Sample Form of Contracts Taken in the Case.

Memorandum of agreement between the following persons, Choctaw Indians, and known as Mississippi Choctaws, being United States citizens, and wives and children of such Choctaw Indians, the said children acting through their guardians, as follows: Sandus Boges, of Madden, Leake County, Miss. (a single man), parties of the first part, and Charles S. Daley, attorney and counselor at law, of the borough of Richmond and city and State of New York, party of the second part.

The said parties of the first part have retained and employed, and do hereby retain and employ, the party of the second part as their attorney to look out for, protect, defend, and secure their interest in the lands in the Indian Territory to which they are or may be entitled as Mississippi Choctaws or as members of the Choctaw Nation, and to procure the recognition of their rights as such Mississippi Choctaws and as members of the Choctaw Nation in said lands and in and to any funds which have heretofore arisen or may hereafter arise from the Choctaw-Chickasaw lands.

It is contemplated and understood that the said party of the second part shall and may associate with himself such other attorneys and counselors at law and other persons and assign such rights hereunder as he may deem necessary to enable him to perform, or secure the performance of, the duties and obligations assumed by him in accepting such retainer and employment. This agreement is made for the benefit of such persons and others aforesaid as shall be associated with the said Daley, as well as himself.

It is agreed that the said Charles S. Daley shall receive as compensation for the services of himself and his associates, as aforesaid, to be rendered in and about such employment and retainer, including the services which have been heretofore rendered and expenses incurred by C. F. Winton and his associates from the year 1895 to date in securing the passage of the act of Congress of June 7, 1897, requiring the Commission to the Five Civilized Tribes to report on the rights of the Mississippi Choctaws; the act of Congress of June 28, 1898, requiring the Commission to the Five Civilized Tribes to identify the Mississippi Choctaws, and that non-residence in Indian Territory should not be construed to deprive the Mississippi Choctaws of their rights and privileges under the laws and treaties of the United States, etc.; the act of May 31, 1900, recognizing the rights of the Mississippi Choctaws to make settlement in the Choctaw-Chickasaw country, etc., and various other services incidental thereto, which services have been in relation to the same matter and of which the parties of the first part have had and are to have full benefit, a sum of money equal to one-half (½) of the value of the net recovery of or for the parties of the first part in land and money or money values, as Mississippi Choctaws or as citizens of the Choctaw Nation, estimating the land at its true and actual value at the time that such compensation be-

comes due and payable; said compensation to be due and payable as follows, namely: One-third (⅓) thereof to accrue and be due one year and one day from the date of the patents issued to the parties of the first part, one-third (⅓) thereof to accrue and be due three
352 years and one day from the date of said patent, and one-third (⅓) thereof to accrue and be due five years and one day from the date of said patent.

The parties of the first part hereby authorize and empower the said party of the second part to rent and lease the said lands, in his discretion, and in the interest of the parties of the first part, and to collect and receive the rent and income coming therefrom.

The parties of the first part also authorize and empower said party of the second part to locate and select the lands to be allotted to the parties of the first part, including a homestead of 160 acres of land, in his discretion, so as to secure the just rights of the parties of the first part.

The parties of the first part also authorize and empower the party of the second part, as their agent, to advertise and invite buyers by the usual methods, and to sell and convey such lands at not less than the value appraised by the U. S. Commission to the Five Civilized Tribes, and to give good and sufficient deeds and assurances of title therefor whenever the same may be lawfully sold, and to collect and receive the purchase price thereof, and to give proper receipts, releases, and acquittances therefor; but this is not to include the homestead of one hundred and sixty acres. The moneys so collected and received, as aforesaid, by the party of the second part shall be applied:

1. To the payment of the amount which the party of the second part is to receive under and by virtue of the terms of this agreement for his expenses and services and the expenses and services of his said associates or assigns.

2. To pay the balance thereof to the parties of the first part.

It is contemplated that in and about the rental, leases, location, and sale of the said lands the party of the second part shall employ the said C. F. Winton to do the practical and expert work in connection with the same.

It is also agreed that the actual expenses and disbursements connected with such employment, or incurred in protecting the rights of the said parties of the first part, shall be first paid out of any recovery to be had herein, and the party of the second part is authorized to make such payments or to reimburse himself therefor out of any moneys coming into his hands by virtue of the provisions of this agreement, before dividing said moneys, as hereinbefore provided.

It is contemplated that the expense of the removal of the said Mississippi Choctaws from their present places of residence to the said Choctaw Nation may be a part of the expenses connected with such employment and the protection of such rights.

The party of the second part is authorized to make and incur such expenses and disbursements in connection with the premises, the same to be repaid as hereinbefore provided.

The parties of the first part agree to do anything that may be necessary for them to do or required of them in connection with the

premises, including the signing and execution of such papers or documents that may be necessary or proper, in accordance with the rules and regulations of the public officials having the matter in charge.

This contract is in place of any and all previous contracts in regard to the securing of the rights of the parties of the first part to lands and money values due them as members and citizens of the Choctaw Nation in Indian Territory.

353 The parties of the first part further agrees that the terms and stipulations of this contract shall be binding on his heirs, executors, and assigns, and that —— —— is hereby appointed executor of the party of the first part, and is instructed faithfully to carry out the terms of this contract.

In witness whereof we hereto attach our hands and seals on this the 12th day of July, nineteen hundred and one, in the State of Mississippi.

Parties of the first part:

SANDUS (his x mark) BOGES.

Witnesses:
1. E. J. PEARSON.
2. H. S. HALBUT.

Contract 2.

We, the undersigned, claiming to be Choctaw Indians by blood, and claiming the right to be enrolled as members of the Choctaw tribe of Indians, in the Indian Territory by virtue of the treaties between the United States and the Choctaw tribe of Indians, and under and by virtue of the acts of Congress providing for the enrollment and allotment of the Choctaw Indians, have this day entered into the following contract and agreement with L. P. Hudson and J. E. Arnold of Ardmore, Ind. Ter., parties of the first part, and ourselves and our heirs, to wit:

We hereby agree to employ the said L. P. Hudson and J. E. Arnold to appear for us and as our attorneys and agents and authorize them to institute all necessary proceedings and do any and all things necessary to be done by said attorneys and agents to secure our rights as members of the tribe of Choctaw Indians in the Indian Territory, and to assist us in any and all legitimate ways to secure our rights in the said Choctaw Nation.

And we hereby agree to pay to the said L. P. Hudson and J. E. Arnold the sum of $250.00 as a retainer fee in the said case; the said sum of $250.00 to be due and payable at the date of this contract (which is paid). And we further agree to pay to the said L. P. Hudson and J. E. Arnold the further sum of $100.00 for each member of our family whom they represent under this contract, when said party is placed upon the Choctaw tribal rolls and awarded an allotment of their proportionate share of lands belonging to said tribe.

The said L. P. Hudson and J. E. Arnold agree upon their part to represent the parties of the second part before the Dawes Commission and the Interior Department or any other tribunal of competent

jurisdiction, and to do all in their power that is legitimate to secure the enrollment and allotment of said parties of the second part as members of the tribe of Choctaw Indians in the Indian Territory.

And it is further agreed and understood by the parties to this contract that the same covers all of the agreements between the parties hereto and that there is no verbal contract of any kind in addition thereto, and that the sole and only services of the parties of the first part to be rendered to the parties of the second part are contained in this contract.

HUDSON & ARNOLD.
JOSEPHINE C. SMITH.

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Contract 3.

We, the undersigned, claiming to be Choctaw Indians by blood, and claiming the right to be enrolled as members of the Choctaw Tribe of Indians in the Indian Territory by virtue of the treaties between the United States and the Choctaw Tribe of Indians and under and by virtue of the acts of Congress providing for the enrollment and allotment of the Choctaw Indians, have this day entered into tthe following contract and agreement with J. E. Arnold, of Ardmore, Indian Territory, party of the first part, and ourselves and our heirs, to wit:

We hereby employ the said J. E. Arnold to appear for us and as our attorney and agent and authorize him to institute all necessary proceedings and do any and all things necessary to be done to secure our rights as members of the tribe of Choctaw Indians in the Indian Territory, and to assist us in any and all legitimate ways to secure our rights in the said Choctaw Nation.

And we hereby agree to pay the said J. E. Arnold the sum of $250.00 as attorney's fees in said case, when we are identified as Mississippi Choctaws by the Dawes Commission. The said sum of $250.00 to be due and payable at the date we are identified as Mississippi Choctaws.

And we further agree to pay the said J. E. Arnold the further sum of $200.00 for each member of our family whom he represents under this contract when said party is placed upon the Choctaw tribal rolls and awarded an allotment of their proportionate share of lands belonging to said tribe.

And we hereby further agree that any sum of money the said J. E. Arnold may have heretofore advanced us at any place or any time while acting as our agent and attorney, or that he may hereafter advance us for necessaries that we have had to have, or for necessaries that we may in future require while obtaining our said allotments, may be charge- against us in addition to the attorney's fees we have herein and hereby agreed to pay, and we hereby agree and promise to pay said sum or sums of money, together with the attorney's fees, the day we receive our said allotments of the lands in the Choctaw or Chickasaw Nations in the Indian Territory.

The said J. E. Arnold agrees upon his part to represent the parties of the second part before the Dawes Commission and the Interior

Department or any other tribunal of competent jurisdiction, and to do all in his power that is legitimate to secure the enrollment and allotment of said parties of the second part as members of the tribe of Choctaw Indians in the Indian Territory.

And it is further agreed and understood by the parties to this contract that the same covers all of the agreements between the parties hereto, and that there is no verbal contract of any kind in addition thereto, and that the sole and only service of the party of the first part to be rendered to the parties of the second part are contained in this contract.

This the 2d day of December, A. D. 1902.

J. E. ARNOLD.
EMILY (her x mark) BAPTISTE.

Witnesses:
J. A. TIPPIT.
L. J. TIPPIT.

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Contract 4.

We, the undersigned, claiming to be Choctaw Indians by blood, and claiming the right to be enrolled as members of the Choctaw Tribe of Indians in the Indian Territory by virtue of the treaties between the United States and the Choctaw Tribe of Indians and under and by virtue of the acts of Congress providing for the enrollment and allotment of the Choctaw Indians, have this day entered into the following contract and agreement with J. E. Arnold, of Ardmore, Ind. Ter., party of the first part, and ourselves and our heirs, to wit:

We hereby agree to employ the said J. E. Arnold to appear for us and as our attorney and agent and authorize him to institute all necessary proceedings and do any and all things necessary to be done by said attorney and agent to secure our rights as members of the tribe of Choctaw Indians in the Indian Territory, and to assist us in any and all legitimate ways to secure our rights in the said Choctaw Nation.

And we hereby agree to pay to the said J. E. Arnold the sum of $250.00 as a retainer fee in the said case. The said sum of $250.00 to be due and payable at the date of this contract. And we further agree to pay to the said J. E. Arnold the further sum of $100.00 for each member of our family whom he represents under this contract when said party is placed upon the Choctaw tribal rolls and awarded an allotment of their proportionate share of lands belonging to said tribe.

The said J. E. Arnold agrees upon his part to represent the parties of the second part before the Dawes Commission and the Interior Department or any other tribunal of competent jurisdiction, and to do all in his power that is legitimate to secure the enrollment and allotment of said parties of the second part as members of the tribe of Choctaw Indians in the Indian Territory.

And it is further agreed and understood by the parties to this contract that the same covers all of the agreements between the

parties hereto and that there is no verbal contract of any kind in addition thereto, and that the sole and only services of the parties of the first part to be rendered to the party of the second part are contained in this contract.

JAMES E. ARNOLD.

Hale, Miss., April 11th, 1901.

Power of Attorney and Contract.

STATE OF MISS.,
County of Lauderdale:

Know all men by these presents, that I, Elizabeth Farve, of Hancock County, State of Miss., party of the first part, have this the 31 day of Dec., 1902, made and entered into the following contract and agreement with J. E. Arnold, of Ardmore, I. T., party of the second part, as follows: Witnesseth, that the party of the first part, representing her to be Choctaw Indian by blood, and claiming her right to her pro rata share of the Choctaw and Chickasaw lands in the Choctaw and Chickasaw Nations in the Indian Territory, and the pro rata share of any and all moneys due, or to become due to her by reason of being or becoming member of the said Choctaw and Chickasaw Nations, and being wholly without means to pay the ex-
356 penses necessary in order to secure her rights and to remove to said Choctaw and Chickasaw Nations in the Indian Territory, and to secure her allotments of lands and pro rata shares of money due, and to become due, do by these presents agree and contract with the said party of the second part as follows:

In consideration of the sum of $1.00 to me cash in hand paid, the receipt of which is hereby acknowledged, and for the services rendered and to be rendered by the said J. E. Arnold in selecting, securing, and locating her said pro rata share of lands and moneys due, or to become due in said nations, and the expenses incurred and to be incurred in carrying out this contract, agree to pay to the said J. E. Arnold, the said party of the second part, a sum of money equal to one-half of the value of all lands that may be allotted to her by the Commission to the Five Civilized Tribes, or any other proper authority in the allotment of said lands; also one-half of all moneys that may be due or become due by reason of her becoming a member of the Choctaw or Chickasaw Nation.

The value of the lands allotted or to be allotted to her will be fixed by the Commission to the Five Civilized Tribes, or the proper authority awarding or allotting the same, and if the Commission to the Five Civilized Tribes, or other proper authority, fail to place a value upon said lands to be so much per acre when the same is allotted, then the party of the first part and the party of the second part, or his agents, or his assigns or his heirs, shall agree as to the value of said lands; and in the case of a failure in the valuation of said lands, or agreement by the parties to this contract as to the value per acre of the land allotted then the party of the first part is to select one arbitrator, and the party of the second part is to

select one arbitrator, and these two arbitrators are to select a third arbitrator, who shall arbitrate and decide as to the value of said lands. And after the value of said lands is so fixed by the three arbitrators, then the party of the first part agree- to pay to the said party of the second part one-half interest in all of said lands, so allotted and awarded to the party of the first part. And it is further agreed and understood that in case the party of the first part should from any cause fail or refuse to execute said deed then the party of the second part is hereby empowered and authorized to take charge of said lands, to fence and improve said lands, and lease and rent the same for a period not to exceed 15 years, and to apply the rents and revenue from said allotted lands to the payment of this contract, after deducting from the said rents and revenues the costs of improvements made on said lands.

The said party of the first part hereby agree- and do by these presents give to the said party of the second part full and complete control of said lands for a period of not to exceed 15 years from the date of allotment.

It is further agreed and understood that in case the rents and revenues from said lands should pay before the expiration of the said 15 years a sum equal to one-half of the value of said lands, the lands to be valued as before mentioned, then the said party of the second part agrees in that event to give and put the said party of the first part back in possession of said lands to be allotted as aforesaid.

It is further understood and agreed by the parties to this agreement and contract that the party of the first part is to give to
357 the party of the second part one-half of all moneys that may be due or become due and payable by the United States and the Choctaw and Chickasaw Nations to the said party of the first part; and the said party of the first part hereby appoints and empowers the party of the second part to receive and receipt for any and all such moneys; and agrees further that if the parties paying out such moneys refuse or fail to accept this as authority for the party of the second part to receive such moneys, then the party of the first part will from time to time execute such powers of attorney and papers as may be deemed necessary by the said party of the second part, in order to enable said party of the second part to carry out the intent and purpose of this agreement; and further agrees that in the event the parties paying out the moneys aforesaid, fail to pay out said moneys to the said party of the second part upon this authority, or any other authority, then the party of the first part will receive said moneys, and in receiving such moneys, agrees to receive one-half of the total amount as the agent and bailee of the party of the second part, and to turn over to the said party of the second part, his agents, executors, administrators, heirs, or assigns, said one-half of moneys so received.

In witness whereof, the party of the first part has hereunto set her hand to this agreement on the 31 day of Dec., A. D. 1902.

ELIZABETH (her x mark) FARVE.

Witness:

GRACE MEADOWS.

W. J. TIPPIT.

March 20, 1903.

For value received I hereby assign to A. J. Waldock or order all my right, title, and interest in and to the within contract.

J. E. ARNOLD.

This agreement, made this 12 day of August, A. D. 1903, by and between Nancy Dixon, or Nancy Jackson, and her two minor children, Bissie and Patsy, of Neshoba County, Mississippi, party of the first part, and T. A. Bounds, of Wortham, Texas, party of the second part: Witnesseth, That whereas the party of the first part is a Choctaw Indian by blood, and a member of the Choctaw Tribe of Indians, and as such entitled to a prorata share with other members of the said tribe in the lands, payments, annuities, funds, and royalties of said Choctaw Tribe of Indians.

And whereas said party of the first part is wholly without means to move to the Indian Territory, as required by the law, and to pay the expenses in order to obtain and secure the allotments of lands and payments, annuities, rights, funds, and royalties, as provided by law.

Now, therefore, in consideration of the sum of one ($1.00) dollar to the said party of the first part in hand paid, the receipt of which is hereby acknowledged, and in further consideration of the services heretofore rendered by —— —— in securing the legislation establishing the rights of the first party as a member of said Choctaw Tribe of Indians, and in identifying and establishing the proof of her rights before the Commission to the Five Civilized Tribes, and for moneys expended incident thereto, and in further consideration of services rendered and to be rendered by said party
358 of the second part in securing, selecting, and locating the prorata shares in said lands, and in obtaining and securing the annuities, payments, rights, funds, and royalties to which the said party of the first part is entitled, and in consideration of the removal of the party of the first part to the Indian Territory and the payment of all the necessary expenses incident thereto, including expense of building homes and other improvements, the said party of the first part hereby promises and agrees to pay to the said party of the second part, his successors and assigns, a sum of money equal to one-half (½) of the value of all lands so allotted or to be allotted to the said party of the first part, or any of them, by the Commission to the Five Civilized Tribes, or by the proper authority in the allotment of said lands, also one-half (½) of all timber on said lands, also one-half (½) of all moneys due or that may become due to said party of the first part or any of them by reason of the payments, annuities, rights, funds, and royalties coming to or belonging to the members of the Choctaw Tribe of Indians. The value of the land so allotted or to be allotted to the party of the first part, or any of them, shall be the market value thereof at the date of the patent or deed therefor to the said party of the first part, and the sum of money equal to one-half (½) of the value of the lands so allotted to said first party shall be due and payable, one-fourth (¼)

thereof in one (1) year and three (3) months from the date of the patent or deed therefor, one-fourth (¼) in three (3) years and three (3) months from said date, and the remaining one-half (½) in five (5) years and three (3) months from said date.

In case any difference of opinion shall arise by and between the parties hereto as to the market value of the lands so allotted or on the interpretation and carrying out of this agreement or any of its provisions, then, and in that event, such differences shall be determined by three arbitrators—each of the first and second parties hereto to appoint one arbitrator and the two so chosen to select a third arbitrator. The award of a majority of such arbitrators shall be binding and conclusive upon the parties hereto. The appointment of such arbitrators shall be made by either of the parties hereto within ten days after receiving notice from the other of said parties to make such appointment. The failure of either of the first or second parties hereto for ten days after such notice to appoint such arbitrator shall authorize the other of said parties to make an appointment for the one so in default. The two arbitrators chosen shall select a third arbitrator within five days after the appointment of the first two arbitrators. If the first arbitrators fail or are unable within the time hereinbefore specified to select a third arbitrator, then any judge of any court of record in Indian Territory upon application made by either of the first or second parties hereto for the purpose, is hereby authorized and empowered to appoint such third arbitrator. The award to be made by the arbitrators hereunder shall be made within fourteen (14) days of the date of the appointment of the third arbitrator.

Said party of the first part, for the consideration aforesaid, further promises and agrees upon the allotment of said lands to make, execute, and deliver to said party of the second part a lease, or leases of the lands so allotted for a period of five (5) years from the date of such allotment, and said party of the second part is hereby authorized, empowered, and directed to enter upon
359 and take charge of said lands, and to fence, clear, improve, occupy, lease, and rent said lands or any part thereof for a period not to exceed five (5) years from the date of allotment, and to apply the rents, revenues, issues, and profits therefrom to the payments of the amounts due and to become due from the party of the first part to said party of the second part under this agreement.

It is further understood and agreed that said party of the first part shall have the right and option at any time before the final payment under the terms of this contract to convey one-half (½) of all lands so allotted to said party of the first part, in full payment and satisfaction of her agreement to pay said party of the second part one-half of the value hereof.

The said party of the first part hereby promises and agrees to give and does by these presents give to the said party of the second part the full and complete possession and control of said lands for a period not to exceed five (5) years from the date of said allotment, and the full right and power to clear and improve the same, and to cut and remove the timber and market the surplus thereof, if any,

and to mine and market coal and other mineral, and products of the soil, and to apply one-half (½) of the proceeds and avails thereof to payment of the amounts due and to become due from the party of the first part to the said party of the second part under this agreement, until the same shall be fully paid, the remaining half of said proceeds and avails being the property of the said party of the second part.

It is further understood and agreed by and between the parties hereto that for the consideration aforesaid the party of the first part promises and agrees to pay and give to the said party of the second part, as when received by said party of the first part, one-half (½) of all royalties, payments, funds, moneys, and annuities that may be due or become due and payable by the United States or by the Choctaw Nation to said party of the first part.

Said party of the first part further promises and agrees from time to time to make, execute, and deliver such leases, powers of attorney, and other instruments in writing as may be deemed necessary by the said party of the second part in order to carry out the spirit and intent of this contract.

In witness whereof, the party of the first part has hereunto set her hand and seal this 12 day of August, A. D. 1903.

NANCY (her x mark) DIXON.

J. F. DUNCAN.
WATSON (hix x mark) MORRIS.

Department of the Interior—Commission to the Five Civilized Tribes.

Power of Attorney.

Know all men by these presents, That Willie Wilson, of Tolles, Mississippi, has made, constituted, and appointed, and by these presents does make, constitute, and appoint W. N. Vernon, of Kiowa, Indian Territory, his true and lawful attorneys for him and in his name, place, and stead, to make application to the Commission of the Five Civilized Tribes for allotment of lands in the Choctaw and Chickasaw Nation to himself and minor children, viz: John Wesley Wilson and Donald Wilson, all of whom are citizens
360 of said nation, giving and granting unto his said attorney full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in selecting, designating, and obtaining said allotment, as fully to all intents and purposes as he might or could do, if personally present; hereby ratifying and confirming all that his said attorney shall lawfully do or cause to be done, by virtue hereof.

In witness whereof, he has hereunto set his hand this 22d day of December, A. D. 1902.

WILLIE WILSON.

Witnesses:
L. P. HUDSON.
TOM TAFFY.

UNITED STATES OF AMERICA,
State of Mississippi, Lauderdale County, ss:

Be it remembered, that on this day personally appeared before me, Willie Wilson, to me personally known to be the person who executed the foregoing power of attorney, and being by me examined, separately and apart from his said attorney, W. N. Vernon, stated and acknowledged that he had executed said instrument as his free and voluntary act and deed, without compulsion or undue influence, and for the purpose therein mentioned and set forth.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal this 22d day of December, A. D. 1902.

[SEAL.] R. F. COCHRAN,
Notary Public.

This argreement, made this 22d day of December, A. D. 1902, by and between Willie Wilson and children, John Wesley (4), Donald Wilson (2), of Tolles, Kemper County, Mississippi, party of the first part, and W. N. Vernon, party of the second part: Witnesseth, that whereas the party of the first part, a Choctaw Indian by blood, and a member of the Choctaw Tribe of Indians, and as such entitled to a pro rata share with other members of the said tribe in the lands, payments, annuities, funds, and royalties of said Choctaw tribe of Indians;

And whereas said party of the first part wholly without means to move to the Indian Territory as required by the law, and to pay the expenses in order to obtain and secure the allotments of lands and payments, annuities, rights, funds, and royalties, as provided by law,

Now, therefore, in consideration of the sum of one ($1.00) dollar to the said party of the first part in hand paid, the receipt of which is hereby acknowledged, and in further consideration of the services heretofore rendered by W. N. Vernon, in securing the legislation establishing the rights of the first party as member of said Choctaw Tribe of Indians, and in identifying and establishing the proof of his rights before the Commission to the Five Civilized Tribes, and for moneys expended incident thereto, and in further consideration of services rendered and to be rendered by said party of the second part in securing, selecting, and locating the pro rata shares in said lands, and in obtaining and securing the annuities, payments, rights, funds, and royalties to which the said party of the first part is entitled, and in consideration of the removal of the party of the first part to the Indian Territory and the payment of all the necessary expenses incident thereto, including expense of building
361 homes and other improvements, the said party of the first part hereby promise and agree to pay to the said party of the second part, its successors and assigns a sum of money equal to one-half (½) of the value of all lands so allotted or to be allotted to the said party of the first part or any of them, by the Commission to the Five Civilized Tribes, or by the proper authority in the allotment of said lands, also one-half (½) of all timber on said lands,

also one-half (½) of all moneys due or that may become due to said party of the first part or any of them by reason of the payments, annuities, rights, funds, and royalties coming to or belonging to the members of the Choctaw Tribe of Indians. The value of the land so allotted or to be allotted to the party of the first part, or any of them, shall be the market value thereof at the date of the patent or deed therefor to the said party of the first part, and the sum of money equal to one-half (½) of the value of the lands so allotted to said first party, shall be due and payable, one-fourth (¼) thereof in one (1) year and three (3) months from the date of the patent or deed therefor, one-fourth (¼) in three (3) years and three (3) months from said date, and the remaining one-half (½) in five (5) years and three (3) months from said date.

In case any difference of opinion shall arise by and between the parties hereto as to the market value of the lands so allotted, or on the interpretation and carrying out of this agreement or any of its provisions, then, and in that event, such differences shall be determined by three arbitrators—each of the first and second parties hereto to appoint one arbitrator and the two so chosen to select a third arbitrator. The award of a majority of such arbitrators shall be binding and conclusive upon the parties hereto. The appointment of such arbitrators shall be made by either of the parties hereto within ten days after receiving notice from the other of said parties to make such appointment. The failure of either of the first or second parties hereto for ten days after such notice to appoint such arbitrator shall authorize the other of said parties to make an appointment for the one so in default. The two arbitrators chosen shall select a third arbitrator within five days after the appointment of the first two arbitrators. If the first arbitrators fail or are unable within the time hereinbefore specified to select a third arbitrator, then any judge of any court of record in Indian Territory, upon application made by either of the first or second parties hereto for the purpose, is hereby authorized and empowered to appoint such third arbitrator. The award to be made by the arbitrators hereunder shall be made within fourteen (14) days of the date of the appointment of the third arbitrator.

Said party of the first part, for the consideration aforesaid, further promise and agree upon the allotment of said lands to make, execute, and deliver to said party of the second part a lease or leases of the lands so allotted for a period of five (5) years from the date of such allotment, and said party of the second part is hereby authorized, empowered, and directed to enter upon and take charge of said lands, and to fence, clear, improve, occupy, lease, and rent said lands or any part thereof for a period not to exceed five (5) years from the date of allotment, and to apply the rents, revenues, issues, and profits therefrom to the payments of the amounts due and to become due
362 from the party of the first part to said party of the second part, under this agreement.

It is further understood and agreed that said party of the first part shall have the right and option at any time before the final payment under the terms of this contract to convey one-half (½) of all lands

so allotted to said party of the first part, in full payment and satisfaction of his agreement to pay to said party of the second part one-half of the value thereof.

The said party of the first part hereby promises and agrees to give and does by these presents give to the said party of the second part the full and complete possession and control of said lands for a period not to exceed five (5) years from the date of said allotment, and the full right and power to clear and improve the same, and to cut and remove the timber and market the surplus thereof, if any, and to mine and market coal and other minerals, and products of the soil, and to apply one-half (½) of the proceeds and avails thereof to payment of the amounts due and to become due from the party of the first part to the said party of the second part under this agreement, until the same shall be fully paid, the remaining half of said proceeds and avails being the property of the said party of the second part.

It is further understood and agreed by and between the parties hereto that for the consideration aforesaid the party of the first part promises and agrees to pay and give to the said party of the second part, as when received by said party of the first part, one-half (½) of all royalties, payments, funds, moneys, and annuities that may be due or become due and payable by the United States or by the Choctaw Nation to said party of the first part.

Said party of the first part further promises and agrees from time to time to make, execute, and deliver such leases, powers of attorney, and other instruments in writing as may be deemed necessary by the said party of the second part in order to carry out this spirit and intent of this contract.

In witness whereof the party of the first part have hereunto set their hands and seals this 22d day of December, A. D. 1902.

WILLIE WILSON.

Witness:
J. WALKER.
TOM TUFFY.

This agreement, made this — day of ——, A. D. 19—, by and between Martha Warter and child, Robert Warter, of Neshoba County, Mississippi, parties of the first part, and J. W. Gillett, party of the second part, witnesseth:

That whereas the parties of the first part, Choctaw Indians by blood, and members of the Choctaw Tribe of Indians, and as such entitled to a pro rata share with other members of the said tribe in the lands, payments, annuities, funds, and royalties of said Choctaw Tribe of Indians;

And whereas said parties of the first part are wholly without means to move to the Indian Territory as required by the law, and to pay the expenses in order to obtain and secure the allotments of lands and payments, annuities, rights, funds, and royalties, as provided by law:

Now, therefore, in consideration of the sum of one ($1.00) dollar to the said parties of the first part in hand paid, the receipt of
363 which is hereby acknowledged, and in further consideration of the services heretofore rendered by J. W. Gillett in securing

the legislation establishing the rights of the first parties as members of said Choctaw Tribe of Indians, and in identifying and establishing the proof of their rights before the Commission to the Five Civilized Tribes, and for moneys expended incident thereto, and in further consideration of services rendered and to be rendered by said party of the second part in securing, selecting, and locating the pro rata shares in said lands, and in obtaining and securing the annuities, payments, rights, funds, and royalties to which the said parties of the first part are entitled, and in consideration of the removal of the parties of the first part to the Indian Territory and the payment of all the necessary expenses incident thereto, including expense of building homes and other improvements, the said parties of the first part hereby promise and agree to pay to the said party of the second part, its successors and assigns, a sum of money equal to one-half (½) of the value of all lands so allotted or to be allotted to the said parties of the first part, or any of them, by the Commission to the Five Civilized Tribes, or by the proper authority in the allotment of said lands, also one-half (½) of all timber on said lands, also one-half (½) of all moneys due or that may become due to said parties of the first part, or any of them, by reason of the payments, annuities, rights, funds, and royalties coming to or belonging to the members of the Choctaw Tribe of Indians. The value of the land so allotted or to be allotted to the parties of the first part, or any of them, shall be the market value thereof at the date of the patent or deed therefor to the said parties of the first part, and the sum of money equal to one-half (½) of the value of the lands so allotted to said first parties shall be due and payable, one-fourth (¼) thereof in one (1) year and three (3) months from the date of the patent or deed therefor, one-fourth (¼) in three (3) years and three (3) months from said date, and the remaining one-half (½) in five (5) years and three (3) months from said date.

In case any difference of opinion shall arise by and between the parties hereto, as to the market value of the lands so allotted or on the interpretation and carrying out of this agreement or any of its provisions, then, and in that event, such differences shall be determined by three arbitrators—each of the first and second parties hereto to appoint one arbitrator and the two so chosen to select a third arbitrator. The award of a majority of such arbitrators shall be binding and conclusive upon the parties hereto. The appointment of such arbitrators shall be made by either of the parties hereto within ten days after receiving notice from the other of said parties to make such appointment. The failure of either of the first or second parties hereto for ten days after such notice to appoint such arbitrator shall authorize the other of said parties to make an appointment for the one so in default. The two arbitrators chosen shall select a third arbitrator within five days after the appointment of the first two arbitrators. If the first arbitrators fail or are unable within the time hereinbefore specified to select a third arbitrator, then any judge of any court of record in Indian Territory upon application made by either of the first or second parties hereto for the purpose, is hereby authorized and empowered to appoint such

third arbitrator. The award to be made by the arbitrators
364 hereunder shall be made within fourteen (14) days of the date of the appointment of the third arbitrator.

Said parties of the first part, for the consideration aforesaid, farther promise and agree upon the allotment of said lands to make, execute, and deliver to said party of the second part a lease or leases of the lands so allotted for a period of five (5) years from the date of such allotment, and said party of the second part is hereby authorized, empowered, and directed to enter upon and take charge of said lands, and to fence, clear, improve, occupy, lease, and rent said lands or any part thereof for a period not to exceed five (5) years from the date of allotment, and to apply the rents, revenues, issues, and profits therefrom to the payments of the amounts due and to become due from the parties of the first part to said party of the second party, under this agreement.

It is further understood and agreed that said parties of the first part shall have the right and option at any time before the final payment under the terms of this contract to convey one-half (½) of all lands so allotted to said parties of the first part, in full payment and satisfaction of her agreement to pay to said party of the second part one-half of the value thereof.

The said parties of the first part hereby promise and agree to give and do by these presents give to the said party of the second part the full and complete possession and control of said lands for a period not to exceed five (5) years from the date of said allotment, and the full right and power to clear and improve the same, and to cut and remove the timber and market the surplus thereof, if any, and to mine and market coal and other minerals, and products of the soil, and to apply one-half (½) of the proceeds and avails thereof to payment of the amounts due and to become due from the parties of the first part to the said party of the second part under this agreement, until the same shall be fully paid, the remaining half of said proceeds and avails being the property of the said party of the second part.

It is further understood and agreed by and between the parties hereto that for the consideration aforesaid the parties of the first part promise and agree to pay and give to the said party of the second part, as when received by said parties of the first part, one-half (½) of all royalties, payments, funds, moneys, and annuities that may be due or become due and payable by the United States or by the Choctaw Nation to said parties of the first part.

Said parties of the first part further promise and agree from time to time to make, execute, and deliver such leases, powers of attorney, and other instruments in writing as may be deemed necessary by the said party of the second part in order to carry out this spirit and intent of this contract.

In witness whereof the parties of the first part have hereunto set their hands and seals this 8th day of May, A. D. 1903.

MARTHA (her x mark) WARTER.

Witnesses to mark:
L. D. HUDSON,
L. P. HUDSON.

365 STATE OF MISSISSIPPI,
County of Hinds:

Know all men by these presents that I, Henry Robertson, of the County of Hinds, State of Mississippi, have made, constituted, and appointed, and by these presents does make and appoint, J. J. Beckham and R. J. Ellington, of Mexia, Texas, his true and lawful attorney for him and in his name, place, and stead, to make application to the Commission of the Five Civilized Tribes for allotments of lands in the Choctaw and Chicksaw Nations to himself and minor children, hereby revoking all former power of attorney, to-wit: Mary Robertson & Eula Robertson, all of whom are citizens of said nation, giving and granting unto his said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in selecting, designating, and obtaining said allotment as fully to all intents and purposes as he might or could do if personally present, hereby ratifying and confirming all that his said attorneys shall lawfully do or cause to be done by virtue hereof.

In witness hereof he has hereunto set his hand this the 3d day of Sept., A. D. 1901.

HENRY ROBERTSON.

THE STATE OF MISSISSIPPI,
County of Hinds:

Know all men by these presents that I, Henry Robertson, for myself and wife, Mary Robertson, and Alice Robertson, about 8 year old, Eula Robertson, about 5 years, my children, of the county of Hinds, State of Mississippi, parties of the first part, have this 3d day of Sept., 1901, made and entered into the following contract and agreement with J. J. Beckham and R. J. Ellington, of Mexia, Texas, parties of the second part, as follows:

Witnesseth, that the parties of the first part, representing themselves to be Choctaw Indians by blood and claiming their rights of their pro rata share of Choctaw lands, annuities, and royalties in the Choctaw Nation, Indian Territory, as members of said tribe and being wholly without means to pay expenses necessary in order to secure their rights and to remove to said Choctaw Nation, Indian Territory, and to secure our allotments of lands, annuities, and royalties, do by these presents agree and contract with said parties of the second part as follows:

In consideration of the sum of one dollar ($1.00) to me in hand paid, the receipt of which is hereby acknowledged, and for the services rendered and to be rendered by the said J. J. Beckham and R. J. Ellington in securing and locating our said pro rata shares of said lands, annuities, and royalties in said Choctaw Nation, Indian Territory, I agree to pay to the said J. J. Beckham and R. J. Ellington, parties of the second part, a sum of money equal to one-half of the value of all lands allotted to us by the Dawes Commission, Curtis Act, or the proper authority in the allotment of said lands, also one-

half of all the moneys that may be due us by reason of said annuities and royalties coming from the said Choctaw Nation.

The value of these lands so allotted to us will be fixed by said Dawes Commission or proper authority awarding or allotting the same. And if the said Dawes Commission or proper authority
366 should fail to value said lands to be so much per acre when they allot the same, then the said party of the first part, and the parties of the second part, their agents or assigns, or their heirs, shall agree to the value of said lands, and in case of failure of said valuation or agreement by the parties of this contract as to the value per acre of said land allotted, then the parties of the first part are to select one arbitrator and the parties of the second part are to select one arbitrator, and these two arbitrators are to select a third, who shall arbitrate and decide value of lands, and after the value of said lands is so fixed by said three arbitrators, then parties of the first part agrees to deed to said parties of the second part one-half interest in all of said lands so allotted and awarded to the parties of the second part.

And it is further agreed and understood that in case the parties of the first part should from any cause fail or refuse to execute said deed, then the parties of the second part is hereby authorized and empowered to take charge of all said lands, to fence, and improve, and lease, or rent it for a period not less than twenty years, and to apply the rents and revenues from said allotted lands to the payment of this contract.

The parties of the first part hereby agree, and do by these presents give to the said parties of the second part the full and absolute control of said lands for a period not to exceed twenty years from date of allotment. It is further agreed and understood the rents and revenues from said lands should pay before the expiration of twenty years a sum equal to one-half the value of all of said lands besides expenses, then the parties of the second part agree in that event to give and put the parties of the first part back in possession of said lands to be so allotted as aforesaid. It is further agreed and understood by the parties to this agreement and contract that the parties of the first part agre to give to the parties of the second part one-half of all royalties and annuities that may be due and payable by the United States or the Choctaw Nation or Chicka-saw Nation to the parties of the first part. And parties of the first part agree and hereby bind themselves to from time to time execute such papers and power of attorney as may be deemed necessary by parties of the second part in order to enable said parties of the second part to carry out the intent and agreement of this contract, hereby confirming all acts of the party of the second part.

In witness whereof the parties of the first part have hereunto set their hands to this agreement and contract.

This the 3d day of Sept., 1901.

HENRY ROBERTSON.

This agreement, made this 12th day of December, A. D. 1902, by and between Sidney John, Bettie John (children), Cora Jakeaway,

Efa John, Ella John, of Leake County, Mississippi, parties of the first part, and J. J. Beckham and R. J. Ellington, parties of the second part: Witnesseth, that whereas, the party of the first part, Sidney John, Choctaw Indian, is by blood and is a member of the Choctaw Tribe of Indians, and as such entitled to a pro rata share with other members of the said tribe in the lands, payments, annuities, funds, and royalties of said Choctaw Tribe of Indians.

367 And whereas, said party of the first part is wholly without means to move to the Indian Territory as required by the law, and to pay the expenses in order to obtain and secure the allotments of lands and payments, annuities, rights, funds, and royalties, as provided by law.

Now, therefore, in consideration of the sum of one ($1.00) dollar to the said party of the first part in hand paid, the receipt of which is hereby acknowledged, and in further consideration of the services heretofore rendered by J. J. Beckham and R. J. Ellington in securing the legislation establishing the rights of the first party as member of said Choctaw Tribe of Indians, and in identifying and establishing the proof of his rights before the Commission to the Five Civilized Tribes, and for moneys expended incident thereto, and in further consideration of services rendered and to be rendered by said parties of the second part in securing, selecting, and locating the pro rata shares in said lands, and in obtaining and securing the annuities, payments, rights, funds, and royalties to which the said party of the first part is entitled, and in consideration of the removal of the party of the first part to the Indian Territory and the payment of all the necessary expenses incident thereto, including expenses of building homes and other improvements, the said party of the first part hereby promises and agrees to pay to the said parties of the second part, their successors and assigns, a sum of money equal to one-half (½) of the value of all lands so allotted or to be allotted to the said party of the first part, or any of them, by the Commissioners to the Five Civilized Tribes, or by the proper authority in the allotment of said lands, also one-half (½) of all timber on said lands, also one-half (½) of all money due or that may become due to said party of the first part or any of them by reason of the payments, annuities, rights, funds, and royalties coming to or belonging to the members of the Choctaw Tribe of Indians. The value of the land so allotted or to be allotted to the party of the first part, or any of them, shall be the market value thereof at the date of the patent or deed therefor to the said party of the first part, and the sum of money equal to one-half (½) of the value of the lands so allotted to said first party, shall be due and payable, one-fourth (¼) thereof in one (1) year and three (3) months from the date of the patent or deed therefor, one-fourth (¼) in three (3) years and three (3) months from said date, and the remaining one-half (½) in five (5) years and three (3) months from said date.

In case any difference of opinion shall arise by and between the parties hereto as to the market value of the lands so allotted or on the interpretation and carrying out of this agreement or any of its provisions, then, and in that event, such differences shall be

determined by three arbitrators, each of the first and second parties hereto to appoint one arbitrator and the two so chosen to select a third arbitrator. The award of a majority of such arbitrators shall be binding and conclusive upon the parties hereto. The appointment of such arbitrators shall be made by either of the parties hereto within ten days after receiving notice from the other of said parties to make such appointment. The failure of either of the first or second parties hereto for ten days after such notice to appoint such arbitrator shall authorize the other of said parties to make an appointment for the one so in default. The two arbitrators chosen shall select a third arbitrator within five days after the appointment of the first two arbitrators. If the first arbitrators fail or are unable within the time hereinbefore specified to select
368 a third arbitrator, then any judge of any court of record in Indian Territory, upon application made by either of the first or second parties hereto for the purpose, is hereby authorized and empowered to appoint such third arbitrator. The award to be made by the arbitrators hereunder shall be made within fourteen (14) days of the date of the appointment of the third arbitrator.

Said party of the first part, for the consideration aforesaid, further promises and agrees upon the allotment of said lands to make, execute, and deliver to said parties of the second part a lease or leases of the lands so allotted for a period of five (5) years from the date of such allotment, and said party of the second part is hereby authorized, empowered, and directed to enter upon and take charge of said lands, and to fence, clear, improve, occupy, lease, and rent said lands or any part thereof for a period not to exceed five (5) years from the date of allotment, and to apply the rents, revenues, issues, and profits therefrom to the payments of the amounts due and to become due from the party of the first part to said parties of the second part, under this agreement.

It is further understood and agreed that said party of the first part shall have the right and option at any time before the final payment under the terms of this contract to convey one-half (½) of all lands so allotted to said party of the first part, in full payment and satisfaction of his agreement to pay to said parties of the second part one-half of the value thereof.

The said party of the first part hereby promises and agrees to give and does by these presents give to the said parties of the second part the full and complete possession and control of said lands for a period not to exceed five (5) years from the date of said allotment, and the full right and power to clear and improve the same, and to cut and remove the timber and market the surplus thereof, if any, and to mine and market coal and other minerals and products of the soil, and to apply one-half (½) of the proceeds and avails thereof to payment of the amounts due and to become due from the party of the first part to the said parties of the second part under this agreement, until the same shall be fully paid, the remaining half of said proceeds and avails being the property of the said party of the second part.

It is further understood and agreed by and between the parties

hereto that for the consideration aforesaid the party of the first part promises and agrees to pay and give to the said party of the second part, as when received by said party of the first part, one-half (½) of all royalties, payments, funds, moneys, and annuities that may be due or become due and payable by the United States or by the Choctaw Nation to said party of the first part.

Said party of the first part further promises and agrees from time to time to make, execute, and deliver such leases, powers of attorney, and other instruments in writing as may be deemed necessary by the said party of the second part in order to carry out this spirit and intent of this contract.

In witness whereof, the parties of the first part have hereunto set their hands and seals this 12th day of December, A. D. 1902.

SIDNEY (his x mark) JOHN,
BETTIE (her x mark) JOHN,
Per JOHN.

J. A. FRANKS.
C. M. FRANKS.
WILLIAM MYERS.

369 Memorandum of agreement between the following persons, Choctaw Indians and known as Mississippi Choctaws, being United States citizens, and wives and children of such Choctaws Indians, the said children acting through their guardian, as follows: Robt. Willis, parties of the first part, and W. H. Gallaspy, attorney and counselor at law of the town of Hickory and State of Mississippi, party of the second part.

The said parties of the first part have retained and employed, and do hereby retain and employ, the party of the second part as their attorney to look out for, protect, defend, and secure their interest in the lands in the Indian Territory to which they are or may be entitled as Mississippi Choctaws or as members of the Choctaw Nation, and to procure the recognition of their rights as such Mississippi Choctaws and as members of the Choctaw Nation in said lands and in and to any funds which have heretofore arisen or may hereafter arise from the Choctaw-Chickasaw lands.

It is contemplated and understood that the said party of the second part shall and may associate with himself such other attorneys and counselors at law, and other persons and assign such rights hereunder as he may deem necessary to enable him to perform, or secure the performance of the duties and obligations assumed by him in accepting such retainer and employment. This agreement is made for the benefit of such persons and others aforesaid as may be associated with the said W. H. Gallaspy as well as himself.

It is agreed that the said W. H. Gallaspy shall receive as compensation for the services of himself and his associates as aforesaid to be rendered in and about such employment and retainer, a sum of money equal to one-half (½) of the value of the net recovery of or for the parties of the first part in land and money or money values, as Mississippi Choctaws or as citizens of the Choctaw Nation, estimat-

ing the land at its true and actual value at the time that such compensation becomes due and payable; said compensation to be due and payable as follows, namely: One-third (⅓) thereof to accrue and be due one year and one day from the date of the patents issued to the parties of the first part, one-third (⅓) thereof to accrue and be due three years and one day from the date of said patent, and one-third (⅓) thereof to accrue and be due five years and one day from the date of said patent.

The parties of the first part hereby authorize and empower the said party of the second part to rent and lease the said lands, in his discretion, and in the interest of the parties of the first part, and to collect and receive the rents and income coming therefrom.

The parties of the first part also authorize and empower said party of the second part to locate and select the lands to be allotted to the parties of the first part, including a homestead of 160 acres of land, in his discretion, so as to secure the just rights of the parties of the first part.

The parties of the first part also authorize and empower the party of the second part, as their agent, to advertise and invite buyers by the usual methods, and to sell and convey such lands at not less than the value appraised by the U. S. Commission to the Five Civilized Tribes, and to give good and sufficient deeds and assurances
370 of title therefor whenever the same may be lawfully sold, and to collect and receive the purchase price therefor, and to give proper receipts, releases, and acquittances thereof; but this is not to include the homestead of one hundred and sixty acres. The moneys so collected and received, as aforesaid, by the party of the second part shall be applied:

1st. To the payment of the amount which the party of the second part is to receive under and by virtue of the terms of this agreement for his expenses and services and the expenses and services of his said associates or assigns.

2. To pay the balance thereof to the parties of the first part.

It is also agreed that the actual expenses and disbursements connected with such employment, or incurred in protecting the rights of the said parties of the first part shall be first paid out of any recovery to be had herein, and the party of the second part is authorized to make such payments or to reimburse himself therefor out of any moneys coming into his hands by virtue of the provisions of this agreement before dividing said moneys as hereinbefore provided.

It is contemplated that the expense of the removal of said Mississippi Choctaws from their present places of residence to the said Choctaw Nation may be a part of the expenses connected with such employment and the protection of such rights.

The party of the second part is authorized to make and incur such expenses and disbursements in connection with the premises, the same to be repaid as hereinbefore provided.

The parties of the first part agree to do anything that may be necessary for them to do or required of them in connection with the premises, including the signing and execution of such papers or docu-

ments that may be necessary or proper in accordance with the rules and regulations of the public officials having the matter in charge.

This contract is in place of any and all previous contracts in regard to the securing of the right of the parties of the first part to lands and money values due them as members and citizens of the Choctaw Nation in Indian Territory.

The parties of the first part further agree that the terms and stipulations of this contract shall be binding on heirs, executors, and assigns, and that —— —— is hereby appointed executor of the parties of the first part, and is instructed faithfully to carry out the terms of this contract.

In witness whereof we hereunto attach our hands and seals on this the 7th day of Oct., 1902, in the State of Mississippi.

Parties of the first part:

ROBT. (his x mark) WILLIS.

Witnesses:
G. W. TODD, JR.
W. H. GALLASPY.

(*Memorandum of Agreement.*)

This contract witnesses that whereas Charles F. Winton and Robert L. Owen had certain contracts with various individual Mississippi Choctaws for services rendered to them from 1896 to date, in
371 procuring for them the rights of citizenship in the Choctaw Nation; and whereas, through the efforts of the said parties and their associates, said Indians have received citizenship and property rights estimated at $3,000 in value in said Choctaw Nation, where they have complied with the conditions imposed by law; and whereas the said Owen and Winton have received no compensation whatever for their time, services, and expenses in connection therewith, and it is now proposed to ask Congress to permit a suit to be brought in the Court of Claims to fix the fees of the said Winton, Owen, and their associates; and whereas bills have been introduced in the House of Representatives and the Senate providing for this privilege: Now, therefore, the said R. L. Owen, acting on his own behalf and on behalf of the said Winton, hereby engages the services of John Boyd, Esq., to assist in procuring the legislation aforesaid, and pledges to him, contingent upon such legislation being obtained at this Congress, an interest of $50,000 in said contracts, agreeing to pay him his proportionate part out of any allowances made by the court to said attorneys in proportion as the above sum bears to the total amounts pledged to the said Winton and Owen on the said estates, estimated at the value set forth in this contract, immediately upon the recovery by them of such moneys so awarded.

Witness our hands on this 17th day of February, 1906, at Washington, D. C.

RO. L. OWEN.
JOHN BOYD.

Memorial of the Mississippi Choctaws.

December, 1896.

To the Senate and House of Representatives of the United States in Congress assembled:

Your petitioners are full-blood Choctaws, speaking the Choctaw language. They live in Mississippi, near Newton, under the authority of the treaty which provided (U. S. Stats., 7, 335, Art. XIV) that we might become citizens of Mississippi, have reservations, sell the reservations, and still "not lose the privileges of a Choctaw citizen."

These privileges we now humbly but earnestly ask to be provided for, in view of the proposed distribution of the Choctaw estate, and that we shall (to use the words relating to us of the treaty of 1866, Revised Treaties, pp. 293, article 13) "have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws."

We are comparatively few in number, but our rights have been repeatedly and fully recognized by our western brothers, as, on December 24, 1889, the Choctaw National Council memorialized Congress (copy herewith) asking the United States to make provision for us to move to the Choctaw Nation, using the language that there were numbers of "Choctaws yet in the States of Mississippi and Louisiana who are entitled to all of the rights and privileges of citizenship in the Choctaw Nation."

This acknowledgment and voluntary declaration of the Choctaw Nation makes argument needless.

372 We have the same rights as other Choctaws, and we respectfully ask that we be provided for either by an enrollment by the U. S. Commission to the Five Civilized Tribes or by a special agent, under the direction of the Commissioner of Indian Affairs.

Your humble servants,

JACK AMOS,
SAM LEWIS,
JOHN JASPER,
CAPTAIN BILLY,
ISAAC POSTOAK,
ERBIE POTUBBIE,
JIM TOOKALOO,
H. P. CHUBBEE,
BEN GIBSON, etc.,
By C. F. WINTON.

Memorial of Mississippi Choctaws.

January, 1897.

To the Senate and House of Representatives of the United States in Congress assembled:

Your petitioners are full-blood Choctaws, entitled, under the treaties, to an equal right in the land of the Choctaws about to be allotted in Indian Territory.

We ask to be enrolled so as to partake of our part in the estate now about to be dispersed.

The act of Congress of May 28, 1830 (U. S. Stat. 412, sec. 3), which provided for an exchange of land west of the Mississippi for those east of the Mississippi, contained a general proviso, as follows: "Provided always, That such lands shall revert to the United States if the Indians become extinct or abandon the same."

The following September of 1830 the treaty was made by the Choctaws—that is, by us, and by those of whom we are the children and the grandchildren, as well as by our brothers, cousins, and immediate blood kin of the Indian Territory.

This treaty of 1830, which we made, conveyed our homes and all our lands in Mississippi to the United States in consideration, partly, as follows:

"The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it."

This grant was manifestly intended to convey to the Choctaws and their descendants a fee-simple title, and was so patented by President Tyler, March 23, 1842.

The condition of the act of 1830 was put in nearly all the Indian treaties of this period, because it was anticipated that some of the Indian communities assigned land would become extinct or abandon the land, and it was put in this treaty as above shown, although this country had been ceded to the Choctaws October 18, 1820 (U. S. Stat. 7, 211, art. 2).

The condition of escheat that the land should revert to the United States if the Indians became extinct or abandoned the land, put into the treaty and patent by the United States for the plain purpose of declaring an escheat, has been strangely turned from its mani-
373 fest purpose. It is suggested now that the meaning of this conveyance "in fee simple" to the Choctaws "and their descendants" "while they shall exist as a nation and live on it" was to deprive any individual Choctaw of his right as a Choctaw unless he lived on it; that every absentee Choctaw should be disinherited under the authority of this provision. It is true that such a view, if made effective, will take away our expected inheritance and bestow it on our kinsmen, and make their share a trifle larger by taking all of our share from us; but such a view is palpably erroneous, as well as destructive to us.

It is plainly a forced construction of the treaty condition, "while they shall exist as a nation and live on it." This condition was not imposed by the Choctaw Nation to keep its citizens at home or to disinherit the absentee, or for the benefit of those not absent, or for any purpose of domestic regulation, all of which belonged, by treaty, to the Choctaw Nation.

This condition was not imposed by the Choctaws or by the Choctaw Nation at all, nor were they consulted by the United States as to this condition. This condition was imposed by Congress, May 28,

1830, prior to the Choctaw treaty of September, 1830. This act of Congress applied to all Indians, and was intended alone to declare the right of escheat if the tribes assigned western land, or any of them should cease to exist as a nation or as a nation abandon the land. Such contingencies were wisely provided for, but Congress had no reference to, or intention of, directing the internal economy of the Cherokees, Creeks, Choctaws, etc., to whom this condition of escheat was made to apply. Indeed, Congress had expressly recognized these Indians as in exclusive control of their own domestic affairs, except where modified by express treaty provisions.

The Choctaws did not impose this condition to limit the number of distributees of this estate and thus make each beneficiary's part the larger. No such construction was thought of. The Choctaws put no condition to their own title. The United States placed the condition on the Choctaw title in the interest of the United States alone, as directed by the act of Congress passed four months before. The plain purpose of Congress was to declare the application of the principle of escheat if the Indians became extinct or as communities abandoned the grant.

Another very important consideration urging us to make the treaty of 1830 was the 14th article, which makes any misunderstanding of the treaty impossible, and shows plainly that such of our citizens who kept a reservation should be allowed to become citizens of Mississippi without losing the privilege of a Choctaw citizen. Many of our people have taken advantage of this right and alternately lived out West with our kin, and back in Mississippi with our old associations, with no thought of being disinherited because of our exercising the treaty right given by Art. 14.

Article 14 (U. S. Stat. 7, 335) provides that every Choctaw desirous of remaining in Mississippi and becoming a citizen of the State should be permitted to do so, and have a special reservation in fee simple, and says in plain terms that "Persons who claim under this article shall not lose the privilege of a Choctaw citizen," but provides, "if they ever remove, are not to be entitled to any portion of the Choctaw annuity."

Those Choctaws who got reservations in Mississippi were not to lose the privilege of a Choctaw citizen except their interest in
374 the Choctaw annuity as an offset to the reservations granted them, which was an equitable and reasonable arrangement.

We have not lost the privilege of a Choctaw citizen. It was expressly agreed by us, and by the United States, and by the other Choctaws that we should not lose the privilege of a Choctaw citizen, except the annuity, by taking reservations, becoming citizens of Mississippi, and living there. (U. S. Stat. 7. 335, Art. XIV.)

We were necessary to the making of this treaty. We joined in the conveyance of the United States and we are grantors and grantees of this treaty, and justly entitled by treaty and in good conscience to our part of the considerations pledged our people for the grant we made.

The treaty of 1830 was signed by 173 Choctaws, who were simply

the leading men of the various towns, the Choctaws having then no organized constitutional government.

They adopted their present constitution only on January 11, 1860.

Your petitioners were as much the grantors of the Mississippi lands as any other Choctaws, and as much entitled to the benefits. We expressly reserved the right to stay in Mississippi if we wanted to, and that we should not lose by this act the privilege of a Choctaw citizen. This provision of the treaty is in full force and has never been modified, and could not be without our consent.

On June 22, 1855, the treaty (Rev. Tr. 276, Art. I) declares that "pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole: Provided, however, No part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

It does not say that if some Choctaws abandon the same it shall revert to some other Choctaws. Much less does it say that being in Mississippi with old friends, neighbors, and associations is constructive abandonment. We deny any intention of abandonment of our inheritance. Nor can we be deprived of our vested right given under the treaty.

The land has not reverted to the United States, because the Choctaws and Chickasaws have not become extinct or abandoned the same. In other words, the condition imposed by the United States by the act of Congress of May 28, 1830—a condition to which the Choctaws were not a party, a condition that had in view the right of the sovereign to a possible escheat and had nothing else in view, far less the domestic polity of the Choctaws or any concern in depriving one Choctaw in order to add to the interest of another—is void by failure of its terms.

Under the 11th and 12th articles of this treaty (Rev. Tr. 278, 279) provision was made for payment of the net proceeds of reservations made to Choctaws under the treaty of 1830 and sold by the United States. This matter was settled in the Supreme Court of the United States, and the net proceeds paid over to the Choctaw Nation in 1869.

Such of your petitioners who received their part of this net proceeds may be denied the right of participation under the terms
375 of article 14, treaty of 1830, in the Choctaw annuities established thereunder, but otherwise their rights to participate in the lands or proceeds thereof is undeniable under the treaty.

In the Choctaw treaty of April 28, 1866, article 10 (Rev. Tr. 292), the United States reaffirms all obligations arising out of treaty stipulations, and article 45 (Rev. Tr. 301) recites that—

"All the rights, privileges, and immunities heretofore possessed by said nations or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connec-

tion with them, shall be, and are hereby, declared to be in full force, so far as they are consistent with the provisions of this treaty."

In articles 11, 12, and 13 of this treaty of 1866 (Rev. Tr. 293) it is provided that should the Choctaws and Chickasaws agree to allotment, it might be done at the expense of the United States, and special notice shall be given, "not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi, Tennessee, Louisiana, Texas, Arkansas, and Alabama, to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Nations may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws," showing beyond possible doubt what was meant by us in the previous treaties, as well as in this one, and what the United States meant and what the Choctaws meant.

We agreed, and the United States guaranteed and the Choctaw Nation guaranteed, that Choctaws might remain in Mississippi as United States citizens and still retain the rights of a Choctaw citizen, except as stated in the then annuity.

These rights we insist on and ask that the United States commission do be instructed to enroll our names in the roll of proposed allottees, and your petitioners will ever pray.

(Signed) JACK AMOS and 246 Others,
Acting Each for Himself and the Members of His Family.
C. F. WINTON, *Counsel.*

Opinion.

BOOTH, *Judge,* delivered the opinion of the court:

This case comes to the court under special jurisdictional acts. The suit is one by various claimants to recover for services rendered and expenses incurred in securing Mississippi Choctaw Indians the right of citizenship in the Choctaw tribe. The whole controversy extends over a long period of years, is much involved, and the statement of the case must be extracted from a most voluminous record of hundreds of pages of printed testimony, which, together with the briefs of counsel, make up ten printed volumes of considerable size.

The native habitat of the Choctaw Indians was in the South, principally in what is now the State of Mississippi. On September 27, 1830, the United States concluded with the Indians what is known as the "Dancing Rabbit Creek treaty" (7 Stat. L., 333). The principal intent, indeed, the lasting benefit, to be secured to the United States by the terms of the treaty was the removal of the main
376 body of the tribe to Indian Territory. This was to be accomplished by an interchange of landed estates, the Indians relinquishing all title to their eastern possessions for a reservation in the West. In a spirit of evident compromise, and as an inducement for the final consummation of the undertaking, the Indians, always loath to depart from their native lands and surroundings, secured a

reservation in the stipulations of the instrument which in the end gave birth to this litigation.

Article 14 of the Dancing Rabbit Creek treaty provided a method by which such Choctaws as chose to avail themselves of the provision might remain in the east and become citizens of the States wherein they resided. Those who did so were to be allotted a certain acreage of land varying in extent according to the number of children in the family. Upon these various allotments a residence of five years was an indispensable condition precedent to the acquirement of a fee-simple title; and it was expressly set forth that all Indians remaining in the State should be considered as intending to become citizens thereof. The final clause of article 14 created the condition which not only occupied the attention of Congress and the Indian Office for many years, but also erected the issue for the settlement of which all the claimants herein claim some compensation. It is in the following language:

"Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove they are not to be entitled to any portion of the Choctaw annuity."

The number of Indians remaining in Mississippi after the emigration of the tribe is indeterminate. Those that did so remain adopted the habits, customs, and dress of the white inhabitants of the State; all tribal laws were abolished; all Indian communal association was discontinued; and they were absorbed into the body politic of their respective communities. The Government assumed no jurisdiction over them and the Congress made no appropriations for them. They were treated, in so far as the United States was concerned, as citizens of the State of Mississippi and of the United States. The State of Mississippi also recognized by positive legislation their status as citizens of the State. The State legislature by an act passed January 19, 1830, abolished all Indian tribal relations and laws theretofore prevailing among the Indians and made them citizens of the State. This legislation was ratified by the constitution of 1832, reenacted in 1840, and carried into the Mississippi Code of 1848.

All doubt as to their civil and political status, which is an important fact in this case, was finally removed by the sixth section of the act of February 8, 1887 (24 Stat. L., 390), which conferred citizenship upon all Indians living apart from their tribe and who have adopted the habits, etc., of the white man with intent to become citizens of the United States. The act of 1887 was amended by the act of March 3, 1901 (31 Stat. L., 1447), extending citizenship to Indians in Indian Territory.

The Choctaw Nation of Indians west for many years after their removal to Indian Territory never contested nor even questioned the right of the fourteenth article Mississippi Choctaws to citizenship in the parent tribe. On two different occasions they manifested a positive desire to have their eastern brethren join them in the west, extending to them the privileges of the treaty. In 1889 they
377 memorialized Congress to provide funds for the removal of large numbers of Mississippi Choctaws to their western reservation, and in 1891, by council action, the nation itself appointed a

commission and provided funds for their removal, on which occasion at least 181 Indians were removed. There is not in the record a single suggestion of opposition to the treaty rights of the Mississippi Choctaws until some time after the year 1893, when the Government inaugurated, through the Dawes Commission, an extensive inquiry among and negotiation with all the Indian tribes in Indian Territory with the avowed intention of allotting all their lands to them in severalty, distributing their Indian funds, and otherwise discontinuing the long-time relationship of guardian and ward.

Notwithstanding this legislation no violent opposition developed upon the part of the nation west until it became apparent that thousands of mixed-blood Choctaws not residents of Mississippi were seeking enrollment under that legislation. The Choctaw Nation in fact never interposed objéctioin to the enrollment of his eastern brother of the full blood claiming rights under the treaty of 1830, if they in good faith removed to the Territory, until largely through the efforts and constant agitation of the parties claiming here, an attempt was made to procure legislation extending the right of citizenship to these claimant Indians, which would in the aggregate increase their rolls to the extent of 25,000 or 30,000 Indians, including thousands of mixed-blood Choctaws who resided elsewhere than in Mississippi. A ceaseless and persistent effort was made by the claimants herein, not only to procure legislation according these general rights, but at the same time vigorously contesting the requirement of removal to the Territory in any event. This alone prolonged and delayed the rights subsequently accorded the present beneficiaries by Congress.

The Dawes Commission was established by the act of March 3, 1893 (27 Stat. L., 645). It made a very comprehensive report of its proceedings to Congress, and on June 10, 1896, Congress directed the commission to make a roll of the Five Civilized Tribes, and provided that all applicants for enrollment should file their applications with the commission within three months from the passage of this act, with right of appeal to the United States courts.

This legislation was the signal for all the activity thereafter manifested upon the part of all the claimants in behalf of the Mississippi Choctaws. The legislation on its face indicated the conclusion of Indian claims in both funds and lands to the tribal property of the Five Civilized Tribes, of which the Choctaws were one. It was likewise the inspiring cause for persistent opposition to the rights of Mississippi Choctaws under the fourteenth article of the treaty of Dancing Rabbit Creek. It became at once apparent that the admittance of a large body of Mississippi Choctaws to participation in the allotment of the Choctaw lands would proportionately decrease the individual allotment to each member of the western tribe already enrolled, and thus materially diminish the value of their entire estate. The western Indian renounced his former affection for his eastern brother and, reversing the earlier policy of the western tribe, interposed objections to his unqualified citizenship.

The usual Indian controversy arose and innumerable objections and counter-objections predicated upon degree of Indian blood and

Indian ancestry, supplemented by arguments pro and con as
378 to the necessity of removal to the Indian Territory on the part of the Mississippi Choctaws, prolonged the settlement of treaty rights and projected the consideration of the whole question through several sessions of Congress. The review of the legislation is quite tedious but indispensable.

Early in 1896 the attention of Congressman (now United States Senator) John Sharp Williams, of Mississippi, within whose district the major number of Choctaw Indians resided, was directed to the rights of his constituents under the fourteenth article of the treaty of Dancing Rabbit Creek. Senator Williams immediately became active; he investigated the subject with great diligence; acquired valuable information from the Interior Department, and prepared, in conjunction with his Mississippi colleagues and other Senators and Congressmen interested in Indian affairs and the Interior Department, many and effective bills and amendments to bills for consideration by Congress, some of which were subsequently enacted into law.

The first of these was a provision inserted in the Indian appropriation act of June 7, 1897 (30 Stat. L., 83), directing the Dawes Commission to investigate and report to Congress whether the Mississippi Choctaw Indians are not entitled to all the rights of Choctaw citizenship under their treaties except interest in the Choctaw annuities.

The commission reported that in view of a decision of the United States Court in Indian Territory requiring the removal to Indian Territory of all Mississippi Choctaw Indians before any right of enrollment accrued, and in view of the debatable question as to tracing ancestry to some person who originally availed himself of the provisions of the Dancing Rabbit Creek treaty, together with the absence of any legal authority on its part to receive additional applications because the date of limitation therefor had expired, it recommended the submission of the whole question to the United States Court of Claims.

In June, 1898, the following Congress, by the twenty-first section of what is known as the Curtis Act, removed the obstructions in the way of the Dawes Commission in the consideration of Mississippi Choctaw claims, under the fourteenth article of the Dancing Rabbit Creek treaty, and gave the commission full power and authority to determine the identity of all the Mississippi Choctaw claimants. This legislation restricted the right of citizenship to such Mississippi Choctaws as had theretofore removed to the Territory, reserving to Mississippi Choctaws, however, all rights they might have theretofore acquired under any Indian treaty or law of the United States.

On December 2, 1898, the Dawes Commission caused to be printed and extensively circulated among the Mississippi Choctaws in Mississippi and elsewhere a circular informing them of their rights under the Curtis Act, notifying them of the time and place where the commission would sit to receive applications, and giving in detail the exact manner of procedure necessary to procure identification. In pursuance of the public notices given as aforesaid, one of the commissioners, Mr. A. S. McKennon, visited Mississippi, filled various

appointments previously made to meet the Indians, and completed a schedule of 1,923 persons whom he thought entitled to citizenship. The "McKennon roll" was constructed upon the theory of according citizenship to all full-blood Mississippi Choctaws whose ancestors were living in Mississippi at the date of the treaty of 1830. The roll was approved by the Dawes Commission, but was later on with-
379 drawn, as it had not met the approval of the Secretary of the Interior, he in fact subsequently disapproving it entirely.

A second commission was dispatched to Mississippi in December, 1900, by the Dawes Commission. The manifest errors and omissions of the McKennon roll made it imperative. This commission held public meetings at Hattiesburg, Meridian, and other places in Mississippi, and continued in session until August, 1901, sometimes at one place and then at another.

On May 31, 1900 (31 Stat. L., 236), Congress further extended the right of enrollment to Mississippi Choctaw Indians duly identified for citizenship in the Choctaw Nation to any time prior to the approval of the final Choctaw rolls then in process of completion by the Dawes Commission, and if such identified Indians made bona fide settlement in the Choctaw country previous to said date the commission was directed to enroll them. This was in effect a substantial extension of time for removal to the Territory. This same act expressly invalidated all contracts or agreements which in any manner provided for the sale or encumbrance of the Indians' allotments, a most significant provision and extremely important in the consideration of this case.

For some reason not apparent upon the face of the statute the Dawes Commission invoked a species of technical refinements and in its quasi judicial capacity construed the act of May 31, 1900, as prospective in its operation, and required all applicants thereunder to trace their ancestry to Mississippi Choctaw Indians who remained in Mississippi and received patents for lands under the fourteenth article of the Dancing Rabbit Creek treaty. It was a most restricted ruling and resulted in the enrollment of but six or seven persons out of from 6,000 to 8,000 applicants.

An attempt was made in February, 1901, to compose the differences as to enrollment by an express agreement between the Dawes Commission and the Choctaw Nation of Indians. The contract, though executed, failed of congressional approval. It was followed, however, by the agreement of March 21, 1902, which, with the amendments thereafter adopted by Congress and later ratified by the Choctaw Nation, concluded in all substantial respects the rights of the Mississippi Choctaws to citizenship in the western tribe. This contract, as amended and subsequently approved by Congress by the act of July 1, 1902, is known as the Choctaw-Chickasaw supplemental agreement, and closed in all important particulars this long and somewhat furious contest. In the end by virtue of this agreement Mississippi Choctaw Indians identified under the provisions of section 21 of the act of June 28, 1898 (Curtis Act), might at any time within six months after the date of their identification by the commission make bona fide settlement within the Choctaw country, and upon

proof of the same within one year after the date of identification should be enrolled as a Mississippi Choctaw, and upon approval of the rolls by the Secretary of the Interior became entitled to the same rights, privileges, and allotments of lands as the members of the Choctaw Nation. No application was to be received after six months from the passage of the act, and the commission was specifically directed to enroll "all full-blood Mississippi Choctaw Indians and descendants of any Mississippi Choctaw Indians, whether of full or mixed blood, who received a patent of land under the said fourteenth article of said treaty of 1830 who had not moved to and made
380 bona fide settlement in the Choctaw-Chickasaw country prior to June 28, 1898." All the aforesaid Mississippi Choctaw Indians were to be carried upon a separate roll.

In 1903 (32 Stat. L., 982) Congress appropriated $20,000 to be expended under the direction of the Secretary of the Interior in removing indigent and identified full-blood Mississippi Choctaws to the Territory. This appropriation was expended in the removal of 420 Indians by special train and their subsequent subsistence, together with the purchase of tools and farming implements for them, until placed upon their individual allotments.

The final disposition of all Choctaw matters was provided for in the legislation of April 26, 1906 (34 Stat. L., 137), providing for enrollment of the minors and descendants of deceased Indians and covering certain contingencies arising from death of a duly enrolled Indian.

The astounding number of 25,000 persons applied for enrollment as Mississippi Choctaws. The commission rejected all applications except 2,534, and 956 of these failed of allotment because they furnished no proof of removal or settlement in the Indian country; 1,578 persons were finally enrolled and received allotments as members of the Choctaw Nation, having furnished proof of removal to the Territory and otherwise complied with the requirements of the law.

The course of all the above legislation and the rights and privileges secured thereby is of paramount importance in this case. The alleged services rendered by attorneys in a professional capacity and the sums expended by others not lawyers in securing the benefits alleged to have been derived by the same, constitute the gravamen of the complaint herein and become the critical inquiry in the case.

Twenty-five claimants prefer individual and partnership claims against the Mississippi Choctaw Indians for participating in all the detailed proceedings above set forth, varying in amount from $5,000 to 15 per centum of $15,000,000, an alleged conservative estimate of the value of the landed estate recovered for the fortunate ones finally enrolled. Eight of the 25 claimants secured at one time and another 3,224 contracts with individual Indians. These are contracts of employment and representation, and most generally provided for the generous compensation of one-half the value of all the benefits finally accruing to the obligee. The remaining claimants rest their cause of action upon assignments of some of the contracts taken by their colaborers or special employment by the parties having con-

tracts with the Indians. Of course all the claimants are now insisting upon rights under the special jurisdictional acts, and the detailed history of each claim will be adverted to hereafter.

Before adverting to the jurisdictional question raised by the defendants, it is quite necessary to state briefly the surroundings and the physical and mental status of the Mississippi Choctaw Indians from 1830 forward. As appears from Finding XI they were extremely poor, lived under insanitary conditions, earning their livelihood as best they could by manual labor; their children did not attend the schools provided for the whites, and the extent of their illiteracy is more than manifest from the fact that a great majority of them executed their contracts with claimants by mark. They were childishly unsophisticated, had absolutely no conception of
381 their property rights or any well-considered ideas as to what they should pay to secure them. It was no task to secure their assent to almost any proposition, evidenced by the fact that as a general thing they manifested no compunctions of conscience in duplication of express agreements, and hesitated in acting as frequently as contrary advice was offered. These statements are all deducible from the record. It is almost incomprehensible to believe otherwise when it positively appears that with apparent ease individual contracts were obtained from these Indians providing for an absolute grant of one-half of their total estate in the event of success, and in such numbers that even the minimum number obtained by one representative would represent a fortune. Attorneys at law, farmers, merchants, bankers, a preacher, and others without any settled vocation in life, were potentially equal before "these remnants of a once powerful tribe," and experienced no difficulty in procuring contracts of employment to represent them.

The defendants challenge the jurisdiction of the court, resting a most vigorous contention upon individual contractual liability, asserting the cause of action to be between adverse parties with complete and adequate remedy in the local courts; that the jurisdictional acts simply afford a forum for the adjudication of the claims without in any way changing their real or legal status or imposing liability upon the defendant Indians. The express provisions of the jurisdictional acts are emphasized in support of this contention, and the status of the claim as it appears from the record is cited as a convincing proof that the litigation is between citizens.

There were two jurisdictional acts—one enacted April 23, 1906 (34 Stat. L., 140), the other May 29, 1908 (35 Stat. L., 457). The verbiage of the two statutes in the enacting part is similar in all substantial respects, the later one being expressed designed to admit the prosecution of additional claims by other claimants. It is the directory clauses of the two acts that differ in important particulars, especially as to the manner of enforcing any judgment the court may render. In order to facilitate an intelligent consideration of their provisions we exhibit here the two statutes:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates

and assigns, for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitably and justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of said Choctaws."

The jurisdictional act was amended by an act approved May 29, 1908 (35 Stat., 457), which provides:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. S. Bounds, and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitably and justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws as individuals by the United States. The said William N. Vernon, J. S. Bounds, and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of section nine of the act of April twenty-sixth, nineteen hundred and six, in behalf of the estate of Charles W. Winton, deceased: Provided, That the evidence of the interveners shall be immediately submitted: And provided further, That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claims of the said Winton and of the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws."

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Under the first act the claimant Winton and his associates filed their petition October 11, 1906, later amending the same after the passage of the act of May 29, 1908. All the other claimants came in under the last act.

The statutes are in pari materia, the additional remedies as to enforcement of judgment in the later one being made expressly applicable to the earlier claimants.

An analysis of the findings, which discloses the proceedings taken by the various claimants under this jurisdiction, demonstrates beyond peradventure the relationship originally obtaining between the claimants and defendants and fixes by the acts of the parties themselves what in the absence of some positive law to the contrary would be their respective liabilities under the common law. The jurisdictional act in the first clause refers expressly to two claims—first, the claims of the persons mentioned therein for services rendered and expenses incurred in the matter of the second claim, viz: The Mississippi Choctaws to citizenship in the Choctaw Nation. We have

discussed at length the origin and development of the claims of the Mississippi Choctaws to citizenship in the old nation, leaving now only the additional observation that the services to be rendered in connection with said claim were legislative services of a professional character, and the alleged expenses incurred, in so far as removal of the Indians is concerned, could not accrue until the legislation admitted of their existence. What then is the claim referred? It is and must be conceded that the jurisdictional act creates no liability against the defendant Indians or the United States. Its function is restricted to the right to sue in a judicial tribunal vested with authority to determine from the controverted questions of law and fact whether under the law the claimants have a legal demand for compensation from the defendants. Green v. Menominee Tribe, 233 U. S., 558.

The defendant Indian in this case never in a single instance, so far as the record shows solicited one of the various claimants to appear for him professionally or expend a dollar in his behalf. The solicitation was wholly from the claimants. Various ones among
383 them visited the Indian in his Mississippi home and procured by personal contact with him individual contracts to represent him—not a band, tribe or nation of Indians, but individual citizens of Indian blood, agreeing in writing to pay a certain sum upon the happening of a certain contingency, and not infrequently granting interest in individual property to be acquired as security for the Indian's performance of his obligation under the contract. They were not only in fact contracts for personal services to be rendered each individual; they were more; they were powers of attorney authorizing substitution of persons other than the named agent to act; they provided for the employment of additional agents and solicitors. The scope of authority obtained by the agent or attorney under these individual contracts was extensive and plenary; no detail has been omitted which might suggest itself to the skilled lawyer or trained claim agent. That this contractual relationship sought by and intended to be created by the claimants was the initial preceding for binding the defendants in law to the payment of large sums of money is more than manifest by the extensive field of territory covered in the haste to procure individual contracts and the sums expended in their procurement. Numerous contracts were assigned and large sums of money realized therefrom. Companies were incorporated with no other assets save these assigned contracts. The petition of every claimant and intervener refers to these individual contracts, and they are produced in the record and copies set forth in an appendix to the findings.

To effectuate the contentions of the defendants with respect to the jurisdictional issue, however, the court must find from the record in the case that notwithstanding the individual contractual relationship the claimants have no justiciable claim. The jurisdictional act refers a claim and if from the record it is ascertainable that a legal demand has been proven to exist, it can not be dismissed simply because its origin was consummated in written agreements for which the jurisdictional act affords no remedy. It is quite possible for a

court to render judgment upon the basis of quantum meruit, although the transaction in its inception arose from express agreements fixing specific compensation, especially so where it is within the power of the legislative body granting jurisdiction to prescribe the conditions upon which the defendants may be sued.

That Congress possesses plenary authority over Indian lands and Indians when dealing with respect thereto is not to be denied. From the decision of the case of Lone Wolf v. Hitchcock, 187 U. S., 553, down to the recent case of Tiger v. Western Investment Co., 221 U. S., 286, this principle has been repeatedly affirmed. The last case cited is a very exhaustive opinion covering every phase of the controversy such as suggested here. There can be no room for argument in view of the number of adjudicated cases that the grant of citizenship to the individual Indian is not inconsistent with governmental control and supervision of Indian property or the exercise of governmental jurisdiction over the Indian in respect to his dealings with said property.

Congress by the jurisdictional acts referred to this court the claim of the petitioners and intervenors, and if from the record the court can find the existence of a legal relationship that warrants the rendering of a judgment upon the principles of quantum meruit
384 the consequential liability attaches. Congress has ample authority to charge the Indian lands involved in this case with the payment for services rendered or expenses incurred in securing to the Indians this estate, and the wisdom of their action is not subject to judicial review. Bailey v. Osage Indians, 43 C. Cls., 353; Butler & Vale v. United States, 43 C. Cls., 497; Sac & Fox Indians v. United States, 45 C. Cls., 287; 220 U. S., 481; Mille Lac Indians, 46 C. Cls., 424; 229 U. S., 498.

It in no wise militates against this contention that the jurisdictional acts provide for a judgment enforceable against funds due the Mississippi Choctaw Indian as an individual by the United States or creates a lien upon his individual allotment. Congress is dealing with Indian tribal lands, and it can limit, prescribe, and impose such conditions and limitations with respect thereto as in its wisdom seems just and equitable. Heckman v. United States, 224 U. S., 413. In this case the court said "Its efficacy does not depend upon the Indians' acquiescence. It does not rest upon convention, nor is it circumscribed by rules that govern private relations. It is a representation which traces its source to the plenary control of Congress in legislating for the protection of the Indians under its care, and it recognizes no limitations that are inconsistent with the discharge of the national duty." While it is true that the Heckman case was a suit to set aside conveyances and recover for the Indian lands disposed of, still the fundamental principle obtains that Congress may in its discretion administer the Indian property as to it seems just and equitable to the Indian and the white man dealing with him.

On the argument of the case the court experienced some doubt upon the question of jurisdiction, but this doubt has been removed by an examination of the authorities cited. The jurisdictional acts are subject to a practical as well as technical construction. The inten-

tion of Congress must prevail, and that intention is manifest from the language of the acts when the situation of the claimants with respect to the subject matter is kept in view. Congress by the act of May, 1900, had invalidated all contracts looking toward a sale or encumbrance of the allottees' lands. Whether in any event the contracts invalidated or those not invalidated were enforceable against an individual Indian is far from certain. One thing is sure, however, they never could have been made the basis of any suit wherein a judgment rendered thereon could become enforceable against the Indian property. Congress observed the situation of affairs and by the jurisdictional acts referred to this court the question of a legal claim against their wards for compensation upon the principles of quantum meruit.

The case of Green v. Menominee Indians, supra, is not contrary to this holding. The acts are in nowise similar. The service rendered is quite distinct. In the Green case supplies furnished the individual Indian were to be paid for by an arrangement which brought the Indian's funds into the hands of a third party; for some reason the written arrangement miscarried, and it was sought to impose the failure upon the Indians. Here we have an Indian fund and an Indian estate carried upon the rolls of the departments in the name of the Mississippi Choctaws as a class—a fund and an estate which was the result of negotiation and legislation alleged to have
385 been successfully terminated by the services of the petitioners, and over which Congress has absolute and plenary power in its administration.

Whether this court can render a judgment upon the principles of quantum meruit is quite another matter which necessarily depends upon the proof in each individual case. The claim in suit, as we view it, is an assertion of liability emanating from the performance of service under an express contract, a service performed, a contract executed, an agreement where the plaintiffs have done all they agreed to do under the express agreements and nothing remains except to pay them therefor. The agreements themselves being invalidated, the service having been performed with the knowledge and consent of the defendants and from which they derived and have accepted benefits, the law implies an obligation to pay what such services are reasonably worth. It has been uniformly held in the cases heretofore cited that jurisdictional acts, similar in most respects to the ones here under consideration, create no liability under the express agreements, the court discarding them in so far as they stipulate for the payment of compensation, leaving for our consideration the determination of the question whether the transaction in all its aspects, taking into consideration the situation of the parties, is one which from the proof satisfies the court that the claimants performed the services claimed for, resulting in benefit to the defendants under such circumstances that the law will imply a correlative obligation to compensate them therefor. The contracts are admissible in evidence both to establish knowledge upon the part of the defendants and as evidence of what might constitute a reasonable award for the work done. This is what the court understands Congress to mean

when it directs a judgment upon the principle of quantum meruit (9 Cyc., 686).

Congress does not by the legislation create the situation necessary to be supplied by proof before the court can act. It affords to the claimants a forum where the burden rests upon them to bring in a record of sufficient strength to sustain a recovery upon the legal principles provided by Congress as the court's guide.

The judgment, if any, to be awarded is not an individual one. Proof of service to an individual Indian is not sufficient to recover. Congress was not assuming jurisdiction over individual Mississippi Choctaw Indians as Indian citizens, for if such had been the intent his individual right to be heard in defense would not have been, if it could be, denied him. The jurisdictional acts comprehend service to the Mississippi Choctaw Indians as a class, and under their terms the proof must establish a service that extended alike to all the Mississippi Choctaws enrolled as such on the rolls of the old nation. In the language of the jurisdictional acts, it must appear that the service was rendered in connection with and for the avowed purpose of legalizing "the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation." Incidental work and labor performed for the benefit of individual Indians, no matter how extensive, was not within the contemplation of Congress when a charge was laid against the Indian defendants' lands and funds, unless it can trace unmistakable benefits accruing alike to each and all of the 1,643 Mississippi Choctaw Indians finally enrolled in the nation and allotted lands under the law.

The matter of the claim of Mississippi Choctaws to citizenship in the Choctaw Nation was a legal controversy between the two
386 Indian parties as to the construction of the fourteenth article of the Treaty of Dancing Rabbit Creek. The determination of this issue must in the first instance rest with Congress. It could not have been the subject of judicial consideration in the absence of legislation. The appeal to Congress brought legislative relief and citizenship was accorded the Mississippi Choctaws. The right to citizenship in the nation was made clear and unambiguous in the respective laws upon the subject, and here the claim itself, in its legal aspect, the real controversy requiring service, the final solution of what rights were reserved to the southern Indians under the disputed article of the treaty, ended. Thereafter it became a personal matter; if the Indian chose to avail himself of the right, the way was open; if he did not, it was a matter of personal judgment. This is plainly substantiated by the failure of nearly 1,000 beneficiarieis already identified to remove to the Territory and acquire property.

At some future date the Congress may deem it just and equitable to relieve these Indians identified but not allotted because of failure to remove to the Territory, and by legislation removing the limitation as to time grant them the full rights and privileges accorded the Indians against whom this claim is made. In that event are we to presume the defendant Indians here impleaded are to bear the full cost and expense of procuring a privilege which in the end inures alike to their belated brethren, thus penalizing the diligent and re-

warding the negligent? Legislation of this character is now pending in Congress and is earnestly urged.

The Congress, it is true, in the legislation which accorded this right, imposed upon the individual Indian applicant the performance of certan conditions precedent to its acquirement—viz, removal to the Indian Territory and residence therein, etc., for a certain specified time—but these details of preliminary procedure, indispensable to the fixing of uniformitiy in the administration of the law, were not and are not merged in the essential thing itself; they constitute no part of the claim to citizenship in the nation. It is simply the mode and method prescribed by which the Mississippi Indian may avail himself of the benefits granted him by Congress in fixing his right of citizenship. By no possible means can it be said that money expended for the removal of from 20 to 60 individual Indians to the Territory redounded to the general benefit of the Mississippi Indians as a class. While it is true they must remove to acquire the right, yet to bring a claim against the class it must affirmatively appear that the service rendered and funds expended benefited all the class alike. The claim for removal is an individual one; it can not be otherwise. Some claimants transported their Indians in box cars, others afforded their clients Pullman sleepers, while still others housed the Indians in temporary shacks, one delegation enjoying the luxury of quarters at local hotels. The Government expended $20,000 in the removal and subsistence of quite a number, and doubtless not a few provided their own means of transportation at their own expense. Certain it is that no one claimant or class of claimants transported all the Indians enrolled or expended sums which come within the range of any rule of uniform expenditure or reasonableness in amount.

All these sums of alleged expenditure occurred subsequent to the acquirement of the right of citizenship and are incidental only to that right. It was personal service rendered to the individual In-
387 dian, moneys advanced and expended for his personal benefit, and not a claim recognized by Congress as one chargeable against the Indian lands. In addition to what has been said, it would be an absolute impossibility to reconcile the mass of confusing and contradictory testimony respecting this very subject and decide from the records what would be a reasonable charge for this service. It is beyond question that many individuals repaid some claimants for the moneys advanced for this purpose. Possibly many more, if permitted to do so, could prove a similar payment. It is inconceivable that Congress intended to reimburse claimants for the funds thus alleged to have been expended and provide no means of defense for the individual Indian charged. On the contrary, the very absence of any provision for individual defense and representation upon the part of the individual Indian manifests an indisputable intention to limit the jurisdiction of the court to an ascertainment of services rendered and expenses incurred which accrued alike to the Indians as a distinct entity and capable of being equitably apportioned among them.

The claim of Charles F. Winton, as we now consider it, is predi-

cated upon alleged services rendered the Mississippi Choctaws in conjunction and association with Robert L. Owens, Preston S. West, Walter S. Logan, deceased, Frank B. Crosthwaite, and John Boyd. West, Logan, Crossthwaite, and Boyd prefer no individual claim; in fact, file no individual petitions. Whatever sums they may be entitled to receive are to be paid them by Messrs. Owen and Winton.

The findings show that in June, 1896, following the act of June 10, 1896 (29 Stat. L., 321), which conferred jurisdiction on the Dawes Commission to make a roll of the Choctaw Indians, Winton and Owen entered into a written arrangement by the terms of which Winton was to proceed to Mississippi and procure from the Choctaw Indians residing there as many contracts as possible, employing said Winton to represent them in securing their rights to enrollment in the nation. Winton was to do the manual labor in this respect and Owen was to bear the expense incident thereto, the profits, if any to be shared equally. This partnership agreement was subsequently modified to some extent, but the modifications are of minor importance. Winton went to Mississippi immediately after the conclusion of this agreement and at this time secured about 1,000 individual contracts with full-blood Mississippi Choctaws, the Indian agreeing to compensate said parties by the payment of a fee of one-half of the net interest of his allotment when the same was secured. All of these contracts were expressly invalidated by the act of May 31, 1900, supra.

In June, 1901, Winton and Owen having previously submitted to an eminent firm of lawyers the question of the validity of the first contracts taken by them, in view of the act of May 31, 1900, and having received an adverse opinion thereon, together with suggestions and advice as to how to proceed in the premises, abandoned the earlier contracts and secured 834 additional contracts providing for a compensation for services equal to one-half the value of the net recovery of or for the Indians in land, money, or money values. The last contracts embraced a total number of at least 2,000 Indians.

In the meantime, however, Owen early in 1896 had called the attention of Hon. John Sharp Williams, then a Representative in Congress from the district where the major portion of the Mississippi Choctaws resided, to the possible rights of his constituents to participate in the allotment of Choctaw lands in the West, at the same time furnishing him with a copy of the treaty of Dancing Rabbit Creek and directing his particular attention to the fourteenth article thereof. Williams up to this time had taken no interest in the matter.

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Winton had likewise been industrious in December, 1896, January, 1897, and September, 1897. On each of these occasions he presented printed memorials to Congress directing attention to the rights of Mississippi Choctaws in the Choctaw Nation under the fourteenth article of the treaty. These petitions to Congress are significant in that they put forth a contention for the right of the Mississippi Choctaws to participate in the allotment of Choctaw lands on the theory that by the terms of the treaty the Mississippi Indians had bought and paid for two things—the right of residence in Mississippi, and of

not losing the right of citizenship in the nation because of such residence.

In October, 1896, Owen applied to the Dawes Commission for the enrollment of Jack Amos and 97 other full-blood Mississippi Choctaws whom he represented under the contracts heretofore described. The contention advocated for their enrollment was rested on the act of June 10, 1896, supra, and involved the question of removal from Mississippi to the Indian Territory, Owen insisting that removal was not necessary. The commission declined to enroll his clients, which ruling was subsequently affirmed on appeal to the United States court for Indian Territory, the case later going to the Supreme Court, where it failed of consideration upon jurisdictional grounds, being, however, indirectly affirmed in the case of Stephens v. Cherokee Nation, 174 U. S., 445.

In February, 1897, Owen drafted a resolution, which was subsequently passed by the United States Senate, calling for certain information from the Interior Department relative to the contemporaneous proceedings between the Choctaw Indians and the representatives of the United States occurring at the time of the negotiation and execution of the treaty of Dancing Rabbit Creek. The information was promptly furnished and was at all times easily accessible and well known to those charged with the administration of Indian affairs.

In June, 1897, Congressman Williams secured the legislation directing the Dawes Commission to investigate the claims of the Mississippi Choctaws (30 Stat. L., 83). Thereafter Owen appeared before the commission in the interests of his and Winton's clients. Nothing more was done by the claimants until subsequent to the passage of the act of June 28, 1898, known as the Curtis Act. It will be recalled that this legislation authorized the identification of Mississippi Choctaws who had removed to the Territory, and was the result of Congressman Williams's efforts in their behalf. Following this Owen, through Winton, prepared a circular, and it was generally circulated among the Indians, pointing out the requirements of the Curtis Act and advising them as to how they might be identified. The circular was, of course, unofficial and was later substituted by the official action of the commission, by which it publicly advised the Indians of the time when and place where the commission would sit to receive applications and the mode of procedure and requirements for enrollment. It will be recalled that Commissioner McKennon proceeded to Mississippi to execute the orders of the commis-
389 sion, and after he arrived there his labor and progress was interfered with and considerably retarded by the interference of Winton and others on the ground, who persistently and industriously delayed and confused the Indians by solicitations for contracts of employment to represent them before McKennon and elsewhere. This fact was emphasized in the report of Commissioner McKennon and is fully sustained by the record.

Neither Winton nor any other claimant, so far as the record discloses, made objections to the McKennon roll, nor were they in any-

wise instrumental in its final disapproval, although it was manifestly erroneous and inaccurate. In fact, Winton, on February 7, 1900, addressed a memorial to Congress which, in effect, approved the principles adopted by McKennon in making up his roll. Congress disregarded the petitions of Winton, and it was apparent to all concerned that the removal of the Mississippi Indians to the Territory would be made an indispensable prerequisite to the securement of citizenship. So we find, for the first time, on April 4, 1900, Winton and his associates suggesting legislation embodying the idea of removal. The act of May 31, 1900, heretofore adverted to, provided for removal, but its passage is in nowise to be accredited to the service of any of the claimants. It was due wholly to the efforts of Congressman Williams and his colleagues in both House and Senate. This is obvious from the last clause of the statute, which expressly invalidated all contracts with the Mississippi Indians and freed their funds and lands from any charge alleged to have been incurred by them in reference thereto.

That Winton and his associates yielded reluctantly to the policy of removal and the expense incident thereto is evidenced by the incorporation of the Choctaw Cotton Co. This company was incorporated under the laws of West Virginia for the purpose of financing the removal of Mississippi Choctaw Indians to the Territory. All the contracts of Winton and his associates were assigned to the company. They were the company's only assets. Two-thirds of the capital stock was issued to Owen and one-third to Winton, and the same was placed upon the market, possessing no value aside from the anticipated returns from the assigned agreements.

The purpose and intention of Congress by the passage of the act of May 31, 1900, as we have previously shown, miscarried, and other legislation became necessary. The final legislation, which culminated in the recognition of the rights of citizenship as embodied in the act of July 1, 1901—i. e., the ratification of the Choctaw-Chickasaw supplemental agreement—was drafted by one McMurray and Assistant Attorney General Van Devanter. It was inimical to and opposed by Winton and associates, and their suggestions and memorials in reference thereto were opposed by the Interior Department and the Congress of the United States.

Winton and other claimants, as will hereafter appear, seriously interfered with, obstructed, and retarded the work of the second commission sent by the Dawes Commission to Mississippi in April, 1901, not only by their never-ceasing efforts to procure contracts of employment but by direct and express professional advice not to appear before the commission for enrollment, as it was without power or authority to enroll them.

The court, by the foregoing, has segregated the claim of Winton and his associates, made necessary by its close relationship and
390 interlacing with the various legislative enactments in the course of this litigation, set forth in chronological order in the findings. No claim is made by Winton and his associates for any expenses incurred, the petition in this respect confining its allegations to a right of recovery for services rendered in procuring legisla-

tion, services before the committees of Congress, the Interior Department, and the Dawes Commission.

A close analysis of this particular claim in view of the principles upon which we are to award judgment found in the jurisdictional acts results in a conclusion adverse to its allowance. The most conspicuous service rendered, treating the same now wholly upon its merits, was the suggestion made by Owen to Williams in 1896 relative to the treaty rights of the defendant Indians. It was as aptly styled by Senator Williams "the suggestion of an idea," and had the suggestion been followed by continuous service in harmony with and helpful to the efforts subsequently put forth to secure the adoption of the legislation procured, it would have been of great monetary value to the final beneficiaries. Unfortunately for the claimants, however, the record discloses an advocacy upon their part of legislation in direct opposition to the attitude of the department and Congress—an opposition of sufficient force to delay, confuse, and retard what was the obvious desire of both the Choctaw Nation west, the Indian Office, and the Congress in the speedy and just settlement of this Indian contest. It is not for the court to say whether Winton and his associates were right and the other side wrong. We are alone concerned with what was done and who brought it about. Senator Williams expressly disclaims any subsequent assistance from Winton, his associates, or any other of the claimants in what he did, and repudiates the idea of any influential efforts in the accomplishment of the laws passed. As a rule, and speaking from the record, the court may well say that Winton and his associates' services before the committees of Congress, the Interior Department, and the Dawes Commission were not the moving cause or the paramount reason for the course finally pursued. The initiatory service set in motion the machinery of legislation; the final product, however, was the conception and labor of others, so that in the end the real substantial factor, the laws which accorded citizenship, the vital matter requiring service, and professional service of a high character, was not the result of claimants' efforts. Winton himself was most of the time assiduously engaged in negotiating and procuring contracts of employment from the Indians. His zeal in the cause frequently led him into open conflict with the authorities of the Dawes Commission in Mississippi, which materially injured the Indians' rights. He was in fact in no position to render extensive or convincing service to the legislative branch of the Government and followed precisely the course of his associates. The memorials prepared and signed by Winton individually are shown to have been devoid of influence by contrasting their subject matter with the legislation enacted.

Aside from the merits of the claim it would be impossible to award a judgment in favor of Winton and his associates and conform to the opinion of the court. Winton and his associates were, during the whole course of this controversy, discharging their obligations to the Indians under their individual contracts; they were representing Choctaw Indians, with whom they had individual contracts and en-

391 deavoring by their efforts to secure for them the greatest possible rights, both individual and property, in the Choctaw Nation as Congress might grant. Winton and his associates were advocating with ability and great earnestness a right accruing to the Mississippi Choctaws under the treaty of 1830 to remain in Mississippi and at the same time enjoy the benefits of Choctaw citizenship in the Nation. This was a contention designedly assumed for the express benefit of their individual clients and for which they expected them and them alone to pay compensation. It was a service performed for and in the interest of a certain number of Mississippi Choctaw Indians without the knowledge or acquiescence of a large portion of the class with whom they had no contracts, and for whom other claimants were performing service of a very distinct and different character.

The jurisdictional act does not dispense with the necessity of proving a service of such a general character as to redound to the benefit of all the Indians alike; nor does it relieve the claimants or the court from the burden of detail investigation into the origin, progress, and result of the service for which compensation is claimed. It would be extending the doctrine of an implied contract to pay for services rendered, which may produce beneficial results, to the limit to hold that services performed in the interest of a part of the Mississippi Choctaws imposes the burden upon a large portion of the tribe, totally disconnected in every way from any association with the claimants, of contributing toward payment therefor. Can it be said that because a certain class availed themselves of legislation advocated by claimants they thereby impliedly promised to pay them for services when the record discloses that these very beneficiaries were under contract to pay other claimants for doing the same thing? Supposing some of the Indians, as doubtless some did, had paid their attorneys, must they again respond for a service of which they knew nothing and which they never requested? It is impossible from the testimony to bring home to the large class sought to be charged with expense a common knowledge of what the claimants were doing, or to place them in a situation from which such knowledge may be inferred. The claimants attempt this by the simple introduction of their contracts of employment, supplemented by proof of what they did, apparently resting their case upon the theory that service to a portion of the class was made by the jurisdictional acts equivalent to service for all. To sustain a recovery upon the principle of quantum meruit there must be more in the record than a mere acceptance of benefits made available through the efforts of claimants to serve a particular class of the whole class in virtue of written contracts so to do. In a claim like this the principles of quantum meruit apply to the persons obligated to pay therefor by the written contracts which have been invalidated by law, but it can not extend to a large number of persons who were wholly innocent of any work or labor being done for them with the expectation of compensating others than those whom they employed therefor.

A judgment upon the principles of quantum meruit presupposes a situation of the parties whereby the court may infer from the

circumstances of the case that the defendants knew of the efforts in their behalf, acquiesced in the performance of labor for their benefit, accepted the benefits of such services, and thereby impliedly promised to pay therefor. In this case not only these claimants but all others have failed to do so. They have shown an individual employment, in some instances extensive, in others limited, each acting within his own sphere absolutely without concerted
392 effort or personal affiliation and association. No one was attempting to serve all the Mississippi Choctaws; no one was attempting to do more than secure the enrollment of their individual clients regardless of the rights of others, and frequently at cross-purposes with each other.

In addition to what has been said it is absolutely impossible from the record in this case to ascribe to any of the claimants the credit for securing legislation. The Congress acts deliberately, and information respecting matters of legislation is usually found in the several departments of the Governmenet. In Indian affairs a separate branch of the Department of the Interior has been established by law with full jurisdiction over the administration of Indian affairs. The records of this department are reliable and trustworthy, and when Indian affairs engage the attention of Congress the Indian Office is called into consultation, and from its archives official documents supply information forming the basis of Indian rights, both personal and property. It would be a task impossible of performance to segregate the services of these claimants from the influence of the department's efforts in the adjustment of this controversy and say that the claimants exerted an influence that moved Congress into a recognition of the Mississippi Choctaw Indians' rights to citizenship. The usual course of legislation negatives the contention in the very beginning.

We do not hesitate to say that we have ignored a contention made in the case upon behalf of attorneys generally that looks to an award of $2,000,000, or 15 per cent of the value of the Indians' estate. This is not a suit susceptible to such an advocacy, and it was unwise to encumber the record with proof of such character. The whole argument predicated upon such a basis in no wise tends to help the court in its deliberation and certainly tends toward a conclusion that the whole transaction from its inception to its close was intensely speculative in its character and devoid of the usual and customary relationship that should always obtain between attorney and client in that the former is always charged with the duty of protecting and conserving his client's interest and property. We venture the assertion that not one of the claimants here concerned but would have gladly accepted employment in this whole matter on a basis of compensation in no wise comparing to the absurd figures noted above.

The claim of Chester Howe, deceased, is, on its face, devoid of merit. It is a claim against Hudson & Arnold and James E. Arnold. Howe traces absolutely no employment by or knowledge to the Indians that he was acting in their behalf. There is nothing in the record to even suggest such a relationship between Howe and the

defendants that would warrant the court in implying a contract upon their part to recompense him. Howe was employed in 1899 by one L. P. Hudson, a member of the firm of Hudson & Arnold, to represent said firm as an attorney at law before the committees of Congress, the Indian Office, and the Dawes Commission. He was never substituted as an attorney by Hudson & Arnold or James E. Arnold under their contracts. James E. Arnold subsequently renewed said contract after the dissolution of the firm of said Hudson & Arnold. Howe's compensation was a contingent fee based upon one-third of the amount stipulated as compensation for the aforesaid firm in their contracts with the Indians, accompanied by an assignment to this extent of an interest in the same.

393 That Howe never considered the Indians as liable for his fees is more than evidenced by the fact that he was on the point of withdrawing from the whole case because Hudson & Arnold had refused to pay him his proportion of certain money collected on the contracts in which he had a one-third interest. Howe, in so far as this record is concerned, never saw a Mississippi Choctaw Indian. He advocated their cause, it is true, and he did it with great faithfulness and signal ability, but he was acting in behalf of his clients, Hudson & Arnold. It would be an act of great injustice to charge the defendants with the payment of an attorney's fee for services rendered by an attorney without their knowledge or consent, and who at the time of acting was under contract with other clients who promised to pay him. The court can not consider the failure of Howe's clients to pay him as an evidence that Congress intended to have the Indians answer out of their estate for this default. Howe's petition will be dismissed.

Page on Contracts, volume 2, section 774, states with such precision the elements of an implied contract that we give the language in full:

"If the person for whom services of a kind usually made the subject of charge are rendered knows of their rendition, he is liable therefor, though he has made no express request, in the absence of special circumstances, negativing his liability. If the person for whom the work is done knows that it is being done and that the person doing expects compensation from the person for whom it is done, and believes that such compensation will be made, and the latter does nothing to correct such impression, he is liable for the work thus done. In the absence of an express previous request it is necessary that the person for whom the work is done should know that it is being done, and further that it is being done for his benefit and also upon his liability. If A employs B to do certain work and B employs C to aid him therein, no implied contract between A and C exists, even if A knows that C is doing the work and that A will ultimately receive the benefit thereof, since A is liable over to B on his contract for the work done."

Ralston & Siddons were employed by Howe, and Howe agreed to pay them. They had no direct relationship with the Indians, and their appearance was without the Indians' knowledge or consent. This petition will also be dismissed.

We next reach the claims of James E. Arnold and Louis P. Hudson. They might each be disposed of very briefly, if it were not for the employment by them of Chester Howe, as heretofore noted. Arnold was not a lawyer, and hence incapable of performing professional services; Hudson was an attorney at law, but proves no professional service. Arnold's principal claim is predicated upon expenses incurred in the removal of the Indians. Claims of this character we decline to recognize, leaving Arnold dependent upon recovery to the services rendered for him by Howe. Arnold collected thousands of dollars from the Indians, and from the inception of his participation in Choctaw affairs to the close of the whole transaction profited perhaps more than all other claimants combined. He agreed to compensate Howe, and unquestionably had sufficient funds on hand to more than pay his attorney all his services were at least reasonably worth.

Hudson's petition follows Arnold's and will be dismissed.

The court in its findings announced May 17, 1915, in considering the claims of M. M. Lindly, John London, and Walter S. Field, found in Findings XLII and XLV a conclusive ultimate fact respecting the same. On a motion for a new trial and to amend findings objection to this course was urgently urged, coupled with an insistence of a positive right to have a response to the claimants request for findings set forth in their briefs. We recognize the force of the contention, grant the request, eliminate our former Finding XLII, withdraw John London's name from Finding XLV, and respond to the requests in the new findings now made and substituted as Finding XLII.

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The claim of the intervenors is a distinct entity—i. e., the claimed relationship must be sustained as sufficient to constitute an association within the meaning of the jurisdictional acts, and is attempted to be so connected that a recovery thereon enures to the individual only on the theory of the worth of their combined efforts. While each file individual intervening petitions the allegations of the same disclose a claimed liability upon a concerted or copartnership effort each contributing in his own way a portion of the combined effort. It is novel, especially so in view of the fact that liability against the defendant Indians is asserted, not upon any contract or relationship with them direct, but wholly upon an independent agreement or agreements among themselves as to the division of fees between them by M. M. Lindly, who alone alleges an express contract with the defendants. Field says he is entitled to be paid because he collaborated with Lindly and Howe under an express contract between the trio and that any fees accruing should be divided. He further alleges an interest in all the services rendered by James E. Arnold, Louis P. Hudson, and John London under an agreement which the above-named persons are supposed to have made with Lindly, which, by the terms of the Lindly, Field, or Howe agreement, above mentioned, was to enure to the benefit of this copartnership, although it nowhere appears that Arnold, Hudson, or London were parties to the alleged written instrument creating the copartnership. Whatever interest they had in the alleged firm was never disclosed until

the institution of this suit, and not one of the intervenors, even under the hand contract which is claimed as being in Lindly's name, except Lindly, connect themselves in the remotest way with the defendant Indians. Lindly and London attempt in oral testimony to corroborate Field in every important particular. The alleged written contract of copartnership between Field, Lindly, and Howe is attempted to be established by a copy of the same. The court discards it, for Howe was dead when it was first produced and his signature does not appear thereon, and no effort is made and does not appear to have ever been made to bind Arnold, Hudson, or London to the agreement in writing; and inasmuch as Arnold directly contradicts and Hudson prefers no claim thereunder, furnishing no proof thereof, this phase of the association is left alone upon the unsupported testimony of Field and Lindly. It would involve a discussion much too prolonged to analyze and point out in detail the manifest inconsistencies appearing in the testimony of these three intervenors. The record is replete with sustained charges of personal and professional misconduct. The court has been amazed at the strenuous effort put forth in an endeavor to erect a claim of sufficient stability to come within the limits of the jurisdictional acts. We have cleaned with the greatest care and after the most careful and deliberative consideration the facts set out in Finding XLII from a record so decidedly discredited and equivocal that we have been unwilling to attest a single
395 circumstance claimed unless corroborated by the testimony of living witnesses, other undisputed circumstances of the transaction, or confirmed by authentic written papers and the contemporaneous history of the whole transaction.

Lindly, Field, and London delayed an assertion of their individual and copartnership claims against the defendant Indians until long after all the other claimants had filed their petitions and much testimony taken in reference thereto. All were entirely familiar with the proceedings and knew the entire course of the pending controversy; Field particularly so, for he had personally represented three of the intervenors. This circumstance is obviously potential, its influence especially convincing, in giving weight to the voluminous testimony presented in support of the claims. Standing alone it is clearly susceptible of explanation. In the absence of such an explanation, however, it must incur the penalty of arousing doubts in reference to the proof of important events which, had the claims been promptly asserted, could have been easily proven by living witnesses, which now, through the lapse of time and the negligence of the claimants, depend upon secondary evidence incapable of being contradicted by the witnesses in behalf of diverse interest directly concerned because of their death.

The claim as predicated upon the alleged hand or tribal contract is preposterous and absurd. No doubt Lindly and Field hoped to secure the execution of such a contract and doubtless drafted and delivered to London such an instrument in form. In order to prove its execution these claimants present a record wherein London himself so thoroughly discredits the whole transaction,

and is so fully corroborated by well-known and existing conditions among the Choctaw Indians in Mississippi that the whole attempt falls of its own weight.

To prove the contents of a lost instrument something more is required than merely a trace of its possession from one to another of the intervenors. The execution of the original can not be sustained by a simple recitation of individual opinion respecting its acknowledgment by those especially interested in sustaining the same. Not a single witness is produced to identify the signatures of the alleged parties thereto, when, before whom, and in what manner or even the capacity or authority of the officer in Mississippi before whom it is alleged to have been taken. The whole transaction is entirely too indefinite, too much is left to inference and conjecture, too many implausible and contradictory statements with reference thereto abound, to warrant the court in the light of the long history of the life and local conditions of the Choctaw Indians in Mississippi to attach weight to an alleged contract of this character.

From a legal aspect the claim must fail. Field, Lindly, and London can not by a copartnership agreement bind the defendant Indians to pay them for professional services which they never engaged them to perform. It is a startling proposition to contend that because Lindly, Arnold, or Hudson had a contract or contracts with the Mississippi Choctaw Indians, and in the performance of the same employed Field to assist them, that thereby the defendants incurred a liability to pay attorney fees to not only their contract attorneys but to all with whom they might thereafter associate.

Lindly, London, and Field never prepared, signed, or pre-
396 sented a brief to the committees of Congress over their own names. Aside from Field's activity in interviewing personally some individual Congressmen and United States Senators, for which service he could not recover, not one of them had the slightest direct connection with the defendants, except as to some individual contracts taken by Lindly and London. The Congress did not intend by the use of the term "associates" to extend a right to prefer a claim against the defendant Indians because perchance the personal relationship between Lindly, London, Field, and Chester A. Howe was congenial and agreeable. These three claimants can not by an agreement between themselves enhance the cost to the defendant Indians for professional services for the performance of which the Indians engaged one of their number to perform. Even if the band and copartnership contracts were fully proven and established, except as to the individual beneficiary thereunder, no possible right of action could accrue. The Indians did not employ the intervenors; they did not even suggest their employment or know of it. The activity by them manifestly was in pursuance of an understanding among the intervenors to which the Indians did not accede and with which they had no concern. It was an express agreement inter alia, by the terms of which Lindly agreed with the remaining intervenors to share with them a proportionate part of fees due him under his contracts with the Indians. The Congress was not making contracts for the intervenors or erecting a relationship out of which

every Indian attorney who voluntarily or otherwise connected himself with another actively and properly engaged in urging the defendants' claims before the various departments of the Government, could come in and claim a personal liability to him. The defendants were not exposed to such unlimited liability. The term "associates" must be read in connection with principles upon which we are to award judgment—"principles of quantum meruit." An associate to recover can not rest his case upon a mere contract of association with an attorney regularly employed by the defendants. He must do more; he must assume the burden of establishing a service under such circumstances and so connected with the defendants that the court can imply a contract upon the defendants' part to pay what those services are reasonably worth. We have heretofore discussed the question under individual contracts and sums expended for removal which we need not again repeat. Suffice it to say that not a single one of the intervenors have established the slightest vestige of authority to represent the defendant Indians, Field himself never having procured a contract in his own name of any kind or character; and the mere fact, if it was established, that he may have been engaged by Chester A. Howe to assist him professionally in his presentation of the case, could under no circumstances give him more than a claim against Howe for the payment thereof.

The claim of James S. Bounds is for services distinctly personal. Nothing that he did resulted in any permanent or temporary benefit to the Mississippi Choctaws as a class. His petition will be dismissed.

The petitions of William N. Vernon, Joseph W. Gillett, Choctaw-Chickasaw Lands & Development Co., J. J. Beckham, and David C. McCalib are all for personal services rendered for and on behalf of individual Choctaw Indians and all were rendered after the passage of the act of July, 1902. They had no part in the solution of the Mississippi Choctaws' claims to citizenship in the
397 Choctaw Nation. The whole transaction of each petitioner and intervenor mentioned above was entirely speculative and personal. All the above petitions are dismissed.

Thomas B. Sullivan and Joseph H. Neill have a claim against the estate of Charles F. Winton, but none against the defendants. Their petitions are dismissed.

The remaining petitions of Melvin D. Shaw, James O. Poole, and John W. Towles are all dismissed for lack of sufficient proof to sustain them.

It is so ordered.

CAMPBELL, *Chief Justice*, concurring:

By the jurisdictional acts the court is authorized and directed to adjudicate the claims of certain parties "against the Mississippi Choctaws."

Winton and associates filed their original petition duly verified by oath of Mr. Owen in which, at much length, they propound their claim as being one against the Mississippi Choctaws for service

"rendered not to one individual but to every individual who is enrolled and who has obtained the right to this great estate." Later and after the second jurisdictional act was passed Winton and his associates filed their amended petition, seeking among other things to avail themselves of the said second act, and reiterating that their claim is for services rendered to the Mississippi Choctaws "as a body." The general character of the services claimed for relates to matters of legislation affecting Mississippi Choctaws. For brevity the name of Winton will be used as referring to the parties named in the first of said acts. Chester A. Howe claims judgment for services of the same general nature as those alleged by Winton against all of the Mississippi Choctaws and also asks that judgments be rendered against individual Indians for additional sums expended in the matter of their removal. Other petitions and intervening petitions were filed. Some of these claim for services rendered, others for expenses incurred, and some claim for both, against individual Indians, and sometimes two or more claimants claim against the same Indians for expenses incurred on their behalf in different ways.

Broadly speaking, the Mississippi Choctaws are descendants of Choctaws who remained East after the Dancing Rabbit Creek treaty of 1830. More specifically, they are those Indians who, residing mostly in Mississippi, could claim citizenship in the Choctaw Nation by virtue of the provisions of said treaty.

For the purpose of this case they are those of the latter class who did claim citizenship and were enrolled in the Choctaw Nation as Mississippi Choctaws.

At the inception we are met with the question of the court's right to entertain the proceeding, and I do not fully concur with my brethren upon that question.

The second act is plainly amendatory of the first act, and as all claimants have filed petitions claiming under it the second act
398 may be looked to as covering the scope of the legislation under which the proceeding comes to this court and the results it contemplates.

The said acts refer to the "claims" of certain parties "against the Mississippi Choctaws." Manifestly they do not comprise all those persons who are referred to in the legislation or proposed legislation relative to Mississippi Choctaws then residents principally of the State of Mississippi.

Section 41 of the act of July 1, 1902, 32 Stats., 651, contains a description of Mississippi Choctaws and refers (1) to all persons who had been duly identified, and (2) to persons who might thereafter be identified under the terms of the act. It deals primarily with the question of identification as distinguished from the enrollment under which rights of citizenship or to property were to be secured. A Mississippi Choctaw could be identified as such and yet not secure property rights, because he must needs meet the conditions of enrollment. As a matter of fact many Mississippi Choctaws (more than 800) were identified who were never enrolled. They remained in Mississippi and did not take up settlement in the western country. The said section also requires that "all Mississippi Choctaws so en-

rolled by said commission shall be upon a separate roll." The jurisdictional acts must have reference to enrolled Mississippi Choctaws and not to the general description of Mississippi Choctaws who were eligible to identification under said section 41 because otherwise there would be subject to suit a number of Mississippi Choctaws who were not enrolled and did not secure any of the benefits of enrollment such as allotments of lands and the right of participation in other funds. Winton's petition makes them parties as follows:

"Names of the defendants in this proceeding against whom your petitioner is entitled to a judgment and a description of the lands upon which your petitioners are entitled to a lien in this proceeding will be found in the schedule showing lands selected by enrolled Mississippi Choctaws filed in this court," said schedule being properly identified as one transmitted to the court in answer to the court's call upon the Secretary of the Interior and described as a "List of Mississippi Choctaws who have selected land in allotment with their roll numbers and descriptions of their selections." The said schedule contains 1,580 names, of which 137 are listed as new-born Mississippi Choctaws, and the said petition avers: "The whole of which purports to be and is for the purposes of this petition admitted to be a complete roll of the Mississippi Choctaws to whom allotments of land in the Choctaw and Chickasaw Nation have been made and upon whose said allotments as described in said exhibit, your petitioners are entitled to and claim liens to secure the payment of such judgments as may be rendered in this cause."

It thus appears that he sues all of the Mississippi Choctaws who were enrolled and to whom allotments had been made, including in the list of defendants a number of minors who are listed as new born. Howe likewise claims against all of these, and further claims against some of the individuals less than all, while other claimants define their claims to be against one or more of said individuals.

The Attorney General, appearing by virtue of said acts, for the defendants, questions the court's jurisdiction upon several grounds,
399 among others that the defendant Indians have not been properly summoned and served with notice of the proceeding and that they are denied due process of law.

The jurisdictional acts do not purport to declare any liability of the Indians, who are defendants, to any of the parties named therein, and leave that question for the court's determination. The liability alleged by Winton is on account of services rendered and expenses incurred in or about the matter of legislation which they claim was the result of their labors and secured to said Indians a vast estate. Howe claims to have contributed by his efforts to said legislation, and other claimants seek to recover for expenses incurred in or about the removal of individual Indians from Mississippi or their subsistence pending their removal or after they had been removed. If all of these claims can be made and allowed it follows that judgments must be rendered (1) against all of the Mississippi Choctaws ,(2) against some of them, less than all, (3) against some individuals in favor of two or more claimants.

According to the second jurisdictional act, which is amendatory

of the first, any judgments rendered by the court are to "be paid from any funds now or hereafter due such Choctaws as individuals by the United States," and a lien on the allotments of land to said Choctaws is declared for such judgments. The "funds" from which the judgments are to be paid can only arise out of a distribution of the fund arising from sales of unallotted lands or properties mentioned in the Atoka agreement and acts relative to the Choctaw-Chickasaw Nation in which Mississippi Choctaws are entitled to participate as provided by the statutes. There is no provision whereby any such distribution is to be made to the Mississippi Choctaws as a body or group independently of other Choctaw participants, but all allotments of land to Mississippi Choctaws have been in severalty to individuals, and their rights to participate in future distributions of funds are under present statutes individual rights. In other words, their participation or interest in tribal property of which the Government is trustee depends on the fact that the statutes recognize them as individually entitled to certain rights present or prospective. That these supposed rights may be altered by subsequent legislation need not be questioned here. Looking to the proposed method of paying said judgments, it is apparent that the funds mentioned are those which upon future distribution or apportionment of the trust estates or parts of it will fall to the share of the several individuals. For the funds to be "due from the United States" to the individuals implies a right of such individuals to demand it, and at that time the funds due will have become debts due them from the United States. And whereas now the Government is trustee of the funds and controls them, the trust, to the extent of the apportionment when made to the individuals, will then have ended, and the character of the holding as to them will have changed from that of a trustee for all the Choctaws to that of a debtor to the individuals. It is at that point that said act would divert from the Indians as individuals the payment of the amount found due and require its application to the payment of said judgments.

If the judgment liens so declared be effective, no reason is apparent why upon their rendition the judgment creditors may not proceed in any court in Oklahoma of competent jurisdiction to enforce said liens against the lands of the individual Indians to the extent, at least, of the proportional part of such judgment due from each. Shields vs. Thomas, 18 How., 252, 264.

We have therefore a proceeding in which individual Indians are defendants having for its purpose the establishment of a liability against all or some of them and to the payment of which liability their individual properties are subjected. The "services rendered and expenses incurred" for which compensation is sought had their inception while the Indian defendants were yet in Mississippi. All the services in legislative matters were rendered prior to final enrollment, and the alleged "expenses incurred" were at different stages between the Indian's movements in Mississippi until his final removal West and his enrollment there. The Indian defendants, except the "new borns," were in Mississippi, and they were citizens of that State. As alleged in Winton's original petition, "The Mississippi Choctaws,

by the terms of the fourteenth article of the treaty of 1830, were made citizens of the United States and, of course, had a right to contract, as they were not Indians who were wards of the Government of the United States." They were citizens of Mississippi, and they subsequently became citizens of Oklahoma.

The petitioners thus suing them, as though by name and as individuals, upon a claim alleged to be against them as a group or body or class, and upon other claims confessedly against individuals, as such, under an act which contemplates a satisfaction of all judgments out of individual holdings, the proceeding in some of its phases has very much the form of personal actions against individual Indians.

It can not be doubted that Congress has "plenary authority over the tribal relations of the Indians." Lone Wolf vs. Hitchcock, 187 U. S., 526. "Congress has full power to legislate concerning the tribal property of the Indians." Nor is citizenship incompatible with the exercise by the General Government of its duties and powers of supervision. Tiger vs. Western Investments Co., 221 U. S., 286, 311. The power of Congress to legislate with regard to such Indian matters "has always been deemed a political one, not subject to be controlled by the judicial department of the Government." Lone Wolf case, supra; Tiger case, supra. But the question is whether Congress has exercised its powers as a political one or has, by the shape the legislation has taken, made the question purely a judicial one. The acts do not declare or define any liability, individual or otherwise, of the Indians to any of the claimants. Green vs. Menominee Indians, 233 U. S., 558. The issues are between citizens of Oklahoma and, perhaps, other States on the one side, and Indian citizens of the United States and of Oklahoma on the other side. The Indians' individual holdings in the hands of their trustees must respond to the judgments rendered.

The question submitted to the court is whether there is any liability against the defendants or any of them to the claimants or any of them. The court, in order to proceed properly, must have the proper parties before it, and parties are entitled to proper notice of suits against them. "Citation before hearing; hearing, or an opportunity of being heard, before judgment are principles of the most primitive justice." The Indians who are sued except the new born were citizens of the United States when the alleged services were rendered and when the alleged expenses were incurred.

401 When they were enrolled and secured allotments of lands in severalty they did not cease to be citizens of the United States. Their "rights, privileges, and immunities" as citizens could not limit the powers of the General Government in dealing with them or their property rights in their new relation. Citizenship is not incompatible with the power of Congress to place limits on their power to control the property allotted to them. But has Congress the power to subject them to a proceeding in this court without service of process to determine whether they are liable for engagements, express or implied, entered into if at all with other citizens prior to the time when their new relation to the Government was assumed? Certainly those Mississippi Choctaws who were identified but never secured enroll-

ment could not be sued in this proceeding without personal service if suable in this court at all. Those who were enrolled could have been sued in State courts on their valid engagements entered into before their rights to citizenship were subordinated to the said control and could have been sued afterwards on said engagements. What they yielded up of their rights as such citizens when they were enrolled among the Choctaws were those rights of citizenship which were inconsistent with their changed relation. They could maintain all rights which as citizens they held and enjoyed that were consistent with their new position. If they had property interests in Mississippi, or if they had made contracts there, they could prosecute or defend suits relative thereto without in anywise affecting the Government's supervisory control over them or their property interests in Oklahoma, and being sued they could demand summons and service. Section 2103, Revised Statutes, provides that Indians not citizens may only contract when the contracts are approved by the commissioner. Shall the Mississippi Choctaws be denied the benefits of that statute because they were citizens when the alleged contracts were made and then when sued upon them or upon a quantum meruit based upon them be denied summons and service and the right of personal defense as though they are Indians and not citizens. To subject the said Indians to judgments such as the acts contemplate and to subject their funds or allotments to the payment of them without service of summons or voluntary appearance will, it seems to me, be a denial of due process.

If, on the other hand, the proceeding be not against the individual Indians as such, but is a proceeding of an equitable nature having for its purpose the reaching of trust funds, their sequestration, so to speak, in the hands of the trustee of them, then the court should not proceed in the absence from the record of the trustee. It is a familiar rule that to suits involving a trust estate the trustee is a necessary party. O'Hara vs. McConnell, 93 U. S., 150; Shields vs. Barrow, 17 How., 130; Carey vs. Brown, 92 U. S., 171. Especially is the rule applicable where the trustee is to be bound by the decree. Cunningham vs. Macon R. R. Co., 109 U. S., 446; McArthur vs. Scott, 113 U. S., 340; Kerrison vs. Stewart, 93 U. S., 155. True, the controversy between the petitioners and the Indians may be said, in a sense, to be a separable controversy, but the manifest purpose of the act taken as a whole is to reach the amounts held by the trustee and subject them to the payment of the supposed liability.

In such case the relief asked for could not be granted without
402 the trustee being before the court. Thayer vs. Life Association Co., 112 U. S., 717.

The Government is trustee of the Choctaw-Chickasaw funds out of which it is proposed to pay any judgments rendered in this proceeding after their apportionment to the individual cestuis que trustent. If its guardianship over the Indians' interests in allotments of land continues it owes some duty of protection to them in the matter of the liens declared by the act, and certainly it should be in position to stay an enforcement of said liens against their individual holdings of land. This it could do if a party. But the United States can not

be sued without their consent and have not consented to be sued in this proceeding. A judgment rendered under said act can not be effectuated unless they are parties to the suit, because they can not be required to pay the judgments if any "out of funds now or hereafter due" from them except they be before the court. It may be added that the court are agreed that the United States can not be made defendants in this proceeding.

For these reasons I think the court should not proceed further in the case.

Assuming, however, that the court has jurisdiction and may proceed in the absence of the trustee, I concur in the result reached upon the merits.

The jurisdictional acts refer to "claims against the Mississippi Choctaws." Not only the language of the acts but the considerations above adverted to as to service upon the defendants rebut a conclusion that suits are authorized against each Mississippi Choctaw who may have made a contract with or for whom or in whose individual interest services were rendered or expenses incurred by a claimant. The acts do not contemplate that the parties named therein, "their associates or assigns," may propound in said proceeding claims alleged to be against one or a few Mississippi Choctaws who are sought to be charged with liability to such claimant and thereby convert the proceeding into a number of distinct and separable controversies between the several claimants and different Indians as defendants. Since the acts do not provide for personal summons to or service on the Indians but by their terms would charge the judgments rendered upon whatever may be due them as individuals from the United States, as well as further secure the payment of the judgments by a lien on lands owned by the Indians in severalty, the court is not justified in extending the controversy beyond the terms of the acts authorizing the proceeding. A claimant is not authorized to select particular Indians supposed to be liable to him and sue them in this proceeding. The claim must be "against the Mississippi Choctaws," and that means against all of them who were enrolled. This view requires the dismissal of the petitions filed herein of nearly all of the claimants and intervening petitioners. It requires consideration of the claims of Winton and his associates, and perhaps a few others. An analysis of the case of Winton and his associates is all that is necessary to a proper understanding of the whole issue.

Their petition and amended petition allege that they have a claim against the Mississippi Choctaws "as a body." They make defendants all of the Mississippi Choctaws who were enrolled and had been allotted lands. By reference to the list of those enrolled as shown by the schedule furnished and filed in this court by the Secretary
403 of the Interior, which list or schedule shows the separate names of the allottees and describes the lands allotted to them severally, the said petition as amended makes all of the enrolled Mississippi Choctaws parties defendant.

It is shown by their petition and proof that Mr. Winton's connection with Mississippi Choctaws commenced in 1896, at which time Mr. Owen was his sole associate. He secured a large number of con-

tracts of employment with individual Indians. It is alleged in the original petition that "they made contracts with Charles F. Winton and later with those associated with said Winton, particularly C. E. Daley. * * * A list of these contracts is respectfully submitted to the court as a basis of the employment of Charles F. Winton, his associates, and assigns."

The contracts made prior to the act of May 31, 1900, came under the condemnation of that statute because they provided for compensation to Winton of one-half interest in the net recovery and authorized him to locate and select allotments and to convey a one-half interest therein. It is alleged in the amended petition that they "contemplated not only obtaining the estate for the Mississippi Choctaws but contemplated their removal and establishment upon their allotments in the Choctaw and Chickasaw country."

After the said act had declared certain contracts void new contracts were taken by Winton, principally in the name of C. E. Daley, several hundred in number, which have been filed in this proceeding, and the general tenor and substance of them appears from a copy attached to the appendix to the court's findings in the case.

In the amended petition it is averred that "the jurisdictional act was sought by the said Winton and his associates solely to cover compensation for their claim for services rendered to the Mississippi Choctaws as a body in securing the legislation and the Executive action, which resulted in the ultimate establishment of the Mississippi Choctaws in the Choctaw and Chickasaw Nation."

The concluding clause of section 3 of the amended petition is that "this claim is limited to compensation for services in the actual securing of the estate."

The original petition is sworn to by Mr. Owen and the amended petition is signed by him, and they therefore may be taken as stating the claim of Winton and his associates. In addition, however, Mr. Owen, testifying in behalf of the said petitioners, states the claim of Winton and his associates as follows: "This suit brought under the jurisdictional act is not brought to enforce these contracts, but is brought to determine the measure of compensation of Winton and his associates for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws for citizenship in the Choctaw Nation; is brought against the Mississippi Choctaws as a group and not as individuals, seeking compensation for services rendered them as a group and not for services rendered to them as individuals."

The claim of Winton and associates is therefore "for services rendered and expenses incurred" principally in work before the legislative body, its committees, and before administrative officers. That an attorney may be employed to present his client's case before Congress, or committees of Congress, or departmental officers is not to be doubted, and such an agreement, express or implied, for
404 purely professional service is valid. As is said by the Supreme Court in Trist vs. Child, 21 Wall., 441, 450: "Within this category are included drafting the petition to set forth the claim, attending to the taking of testimony, collecting facts, preparing argu-

ments and submitting them orally or in writing to a committee or other proper authority, and other services of like character. All these things are intended to reach only the reason of those sought to be influenced. They rest on the same principle of ethics as professional services rendered in a court of justice, and are no more exceptional."

Claiming a liability to them by the Mississippi Choctaws, whether "as a group," "a body," or "a class," or otherwise, it is incumbent on said claimants to show the facts upon which any liability rests. The general rule, where the suit is for professional services, is that to make out a case the plaintiff must show that the professional work was done and that he was employed by the defendants to do it. "It is not enough merely to prove that the work was performed, because it may have been without authority or may have been upon the employment of some person other than the defendants." Wright vs. Fairbrother, 81 Me., 39.

We have not been shown any statute which provides for any apportionment of the Choctaw funds to the Mississippi Choctaws as a group, body, or class. On the contrary, the right accorded by the statutes authorizing the enrollment of Choctaws living in Mississippi upon their removal to and residence in the Choctaw country is in each case an individual right. The law declares that "any Mississippi Choctaw duly identified, etc., shall have the right * * * to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled * * * as Choctaws entitled to allotment." Act of May 31, 1900, 31 Stat., 236. True, a separate roll of Mississippi Choctaws is required by section 41 of the supplemental Choctaw-Chickasaw agreement, 32 Stats., 641, but section 42 of that agreement provides that "when any such Mississippi Choctaw shall have in good faith continuously resided upon the lands of the Choctaw and Chickasaw Nations for a period of three years * * * he shall upon due proof * * * receive a patent for his allotment, as provided in the Atoka agreement, and he shall hold the lands allotted to him as provided in this agreement for citizens of the Choctaw and Chickasaw Nations." Section 43 of said agreement requires personal application for enrollment except that a father may apply for his minor children and a husband may apply for his wife.

To sustain the issue on their part Winton and associates urge that a large number of contracts were made by Winton and his associates with individual Mississippi Choctaws after June, 1896. The said petitioners claim that these contracts comprehended the interests of many more Mississippi Choctaws; that Winton went to Mississippi in 1896 and visited every Choctaw neighborhood, advising the Choctaws of their rights; that they prepared and caused to be presented a number of memorials to Congress setting forth the claim or rights of the Mississippi Choctaws; that they actively urged certain legislation favorable to the Mississippi Choctaws and opposed legislation as unfavorable to them at divers times between 1896 and 1906; that Winton addressed a circular letter to the Mississippi Choctaws wherein he informed them of his activities in their behalf; that the Mississippi Choctaws accepted the results of their

labors, and should be held to have impliedly, at least, agreed to pay the reasonable value of such services.

Do the facts establish the liability alleged, or any liability?

That Winton made a large number of contracts with individual Mississippi Choctaws is definitely shown. By the act of June 10, 1896, the United States Commissioner to the Five Civilized Tribes was instructed to make up a roll of members of the said five tribes with a view to the allotment of the land of said five tribes among the membership thereof; and directly after the passage of that act a contract, which was subsequently modified, was made between Mr. Winton and Mr. Owen. By the modified contract, dated July 24, 1896, it was provided that Winton should act as attorney in the Mississippi Choctaw cases under agreement with Mr. Owen; that the latter had a one-half interest in the contracts, and in the event of any accident to Winton he had full authority to take them up in place of Winton. Thereupon Winton proceeded to Mississippi, traveled throughout the State, and procured the contracts of a large number of persons—Mississippi Choctaws, beginning with Jack Amos. Some of these contracts were taken in his own name; some in the name of C. E. Daley, an attorney belonging to the firm of Logan, Desmond & Harley, of New York City, who was acting for and in behalf of Winton; some were taken in the name of Mr. Owen, but all of them occupied the same relation as if they had been made in the name of Winton. These contracts provided that Winton should receive one-half of the net recovery, and gave him a large measure of control over the property when secured.

The condition of the contracting Indians is stated in Winton's amended petition, as follows: "At the time of the making of the contracts by Charles F. Winton with the Mississippi Choctaws in 1896, the Mississippi Choctaws were extremely poor, working at manual labor, making fences, picking cotton, chopping wood, and having no landed estate or personal property worth mentioning. Their children could not attend schools provided for the whites; they were subject to a species of vassalage, not permitted to leave their employers' service while under indebtedness, which operated as a kind of peonage; were not allowed to vote or to exercise the rights accorded the citizens of Mississippi, and were otherwise in a state of helplessness, both financially and socially.

As above stated, after the passage of the act of May 31, 1900, providing "That all contracts or agreements looking to the sale or encumbrance in any way of the lands to be allotted to said Mississippi Choctaws shall be null and void," Winton proceeded to secure other new contracts.

All of the contracts were with individual Indians, and upon that theory it can be asserted that because a large number of said Indians made contracts with Winton or Daley other Indians not so contracting became affected or bound by them it is difficult to perceive. They did not constitute a tribe or band, and had no tribal organization or government. The State laws had looked to the abolishment of any tribal or Indian government among them. They were citizens, and by contracting with them Winton admitted their

power to contract. As late as February, 1906, as appears
406 from the contract between Mr. Owen and Mr. Boyd, one of the associates named in Winton's petition, there is a reference to said contracts as being with "various individual Mississippi Choctaws." If the Mississippi Choctaws were "in a state of helplessness, both financially and socially," the fact but reinforces the conclusion that those who did not undertake or contract with Winton and his associates should not be held to be bound by the act of those who did contract.

That Winton went among the Mississippi Choctaws is shown by the findings; but it is not shown, except by the contracts they made, who of them employed him or his associates to represent them. Having the right of contract many could and did abstain from contracting with him.

Nor can any implied undertaking by the Indians be raised up from the fact that Winton prepared or presented memorials to Congress in the name of the Mississippi Choctaws and that he sent out a circular letter addressed to the Mississippi Choctaws containing an account of his work.

The first memorial in December, 1893, is in the name of individuals who had employed Winton. The second in January, 1897, purports on its face to be a petition for the enrollment of those whose names are stated and they were clients of Winton. The third "Memorial and petition" September, 1897, purports to be on behalf of the Mississippi Choctaws and is signed "C. F. Winton, counsel." It is an argument upon the rights of the Mississippi Choctaws, the burden of which is to show that said Indians were entitled to participate in the Choctaw estate, except annuities, and remain in Mississippi and in bold type asks, "Why should they be compelled at all to move to the West?" However beneficial this view may have been to his clients if adopted, it was contrary to the course of legislation adopted.

The fourth memorial, February, 1900, was a "petition of the Mississippi Choctaws" introduced in the House by Mr. Williams of Mississippi, and is signed, "The Mississippi Choctaws, by C. F. Winton, Logan, Desmond & Harley, attorneys for petitioners." The petitioners are described as "full-blood Choctaw Indians speaking the Choctaw language, citizens of the Choctaw Nation, residing in Mississippi," and the petition renews the argument that they are entitled to remain in Mississippi and enjoy participation in the Choctaw estate west. It concludes with a prayer that they be sent to the courts "where this controversy may be settled without delay."

The memorial of April, 1900, is principally addressed to the question that the law should provide more specifically for their enrollment upon removal, and is signed, your humble servants, the Mississippi Choctaws, "Logan, Desmond & Harley, C. F. Winton, counsel."

The last memorial, April, 1902, deals with a proposed change in the statutes relative to identification and enrollment of Mississippi Choctaws, and purports to be a petition of the Mississippi Choctaws, being signed, "The Mississippi Choctaws, by C. F. Winton, Robt. L. Owen, counsel." In addition to these petitions or memorials, it

appears that in 1898 Winton addressed a circular letter "to the Mississippi Choctaws," which is set out in the amended petition. Without stopping to examine the accuracy of his statements or to inquire whether under the principle announced in Trist v. Child, 21 Wall., 441, compensation could be awarded, for "getting Senator
407 Walthall to pass a resolution through the Senate," or "soliciting Mr. Allen, of Mississippi, to prepare it," or because "by the help of Mr. Williams and Senator Walthall and Mr. Allen" an "item was put in the Indian appropriation act," it is sufficient to say that the proof does not show who of said people received said letter or to how many of them it was sent. Who of them did or could read it? If sent to all, it would not impose any liability upon its recipients, without more. The relation of attorney and client can not be created by the attorney notifying an indefinite number of people that he is working for legislation in their interest. Winton knew he had a large number of contracts which at that time had not been nullified by law, and it is reasonable to suppose he desired others. The statement in his letter of the importance of certain proof in the matter of enrollment and that he had secured a list of claimants who were descendants of fourteenth-article claimants which he would make available to his "clients as soon as practicable," can as reasonbly be construed to be a suggestion to the Indians to become his "clients" as it can be said to have been a disinterested act in their behalf.

The memorials of "the Mississippi Choctaws" and Winton's said letter together do not create the relation of attorney and client between Winton and the Indians who did not employ him. Winton was retained by a number of Mississippi Choctaws under contracts which he was diligent to procure. That he represented his clients may be conceded. He was "counsel" or "attorney" for his clients and he had the right, as they had, to use the general designation of the Mississippi Choctaws in presenting his clients' case. But in so doing he did not become counsel for all of the Mississippi Choctaws. Those not contracting with him could be silent and not be bound to pay for his services or they could contract, as many did, with other attorneys. If an attorney employed by one concern to present before a committee of Congress an argument in favor of a higher tariff on certain manufactured articles should see fit to urge that "the manufacturers of this country" were in need of such legislation, would anybody than his client be bound to compensate him? If he notified them by circular or through the press that he intended to speak or act in behalf of all of them would "the infant industries" be saddled with his fee upon the principle of quantum meruit? I think not.

The theory advanced in argument that Winton is equitably entitled to compensation because of his efforts in behalf of the Mississippi Choctaws which are alleged to have resulted in securing to them a great estate is not tenable. There is no analogy between the estate belonging to Mississippi Choctaws or in which they are severally interested and a trust fund brought into a court for administration. The rights of Mississippi Choctaws in the Choctaw Nation and estate were not cognizable by any court, but were subjects of legisla-

tive action. To pay for services of attorneys rendered in or about the procuring of legislation deemed needful or desirable to said Indians upon such theory would be an undue extension of the trust-fund doctrine. When, through the efforts of a complaining party (who, generally speaking, sues on behalf of himself and all others similarly situated who will come in and bear their proportion of the expense of the litigation) a court of equity brings within its control a fund which the defendants are seeking to divert or in breach of a trust are attempting to withhold from those entitled to par-
408 ticipate in it, the court may distribute the fund so realized.

Upon the principle that "a trust fund should bear the costs of its administration," it is allowable to pay out of the estate the costs and expenses of the complaining party under whose bill the court acquires jurisdiction and decrees relief. These costs and expenses include reasonable attorney's fees to the solicitor of the complainants. Trustees v. Greenough, 105 U. S., 527. But the solicitor's right to compensation is worked out through the equity of his client against the other parties who come in and participate in the fund, it being considered unjust that one complainant should bear personally all the expense of the litigation, the favorable termination of which enures to the benefit of all. Aside from the rights of his client, the solicitor, generally speaking, has no independent claim upon the trust fund, and the petition for his compensation is generally made in his client's name. In exceptional cases the solicitors may intervene in their own behalf. Central Railroad & Banking Co. of Georgia v. Pettus, 113 U. S., 116.

Whatever the service actually rendered was, Winton did not create a trust fund. It was already in existence and was under the management and control of the United States. They are still the trustees, and the trusteeship has not changed except to the extent that allotments in severalty may have changed it. At no time was the right of fourteenth article claimants under the treaty of 1830 to remove to and become citizens of the Choctaw Nation denied. The procedure which they should adopt to accomplish that end was long delayed, but the trust was never violated by the trustee. The efforts of Mississippi Choctaws through their counsel to establish a right for them to participate in the Choctaw estate and remain in Mississippi were not successful. Removal west was made a condition precedent to their participation in said estate, and the statutes recognized that condition. Any charge upon the trust estate must be made in the forum which administers it and not by a court which has no control over it.

In several cases under special jurisdictional acts this court has been called upon to determine the compensation which attorneys should receive, payable out of funds due Indians. In the Ute Indians case, 45 C. Cls., 440; 46 Ib., 225, the jurisdictional act directed the court to set apart just and reasonable compensation to the attorneys on behalf of the plaintiffs, and authorized an appearance therein by an attorney for the Indians. In the Sisseton and Wahpeton Indians case, 42 C. Cls., 416, the act provided for the ascertainment of reasonable attorneys' fees, to be paid to the attorneys for the Indians for

services rendered in said case. In the Eastern Cherokee Indians case, 40 C. Cls., 252, it was provided that the prosecution of the suit on the part of the Cherokees should be through attorneys employed by their proper authorities, their compensation for expenses and services rendered to be fixed by the Court of Claims upon the termination of the suit.

But the acts involved in those cases declared a liabilitiy, authorized the court to ascertain the amounts due, and directed their payment out of the fund in question.

In the Butler & Vale case, 43 C. Cls., 497, involving the claim of the Colville Indians, the court did not in terms hold that the act there considered defined a liability to the attorneys. The act is very different in terms from the acts involved in this case.

409 Any rights of Winton must therefore rest upon contract, express or implied, with the Mississippi Choctaws made defendants to this proceeding in his petition. No express contract is shown or claimed. None can be implied from the circumstances above referred to or relied upon by Winton. The employment by some Mississippi Choctaws was not an employment by all of the Mississippi Choctaws. Those who did not employ Winton had just the same privilege of employing other agents as his clients exercised in employing him, and many of them did so. The "new borns" employed no one, and could not do it, nor are they or their interests bound upon any theory of representation.

It remains to consider the contention that the Mississippi Choctaws accepted the benefits and fruits of Winton's labors in behalf of the Misisippi Choctaws, "secured great estates thereby," and "upon the principle of quantum meruit" should be held to have impliedly agreed or consented to pay therefor. Mississippi Choctaws became entitled to allotments in severalty and to participation in the Choctaw estate upon their being identified and enrolled. They must needs remove from Mississippi and take up a bona fide residence in the Choctaw-Chickasaw country. They were not required to act as a "body" or "group," but the act of identification, removal, and allotment called for individual action and volition. They applied for identification as individuals, and were identified as such; they were enrolled as individuals, and as individuals they received allotments of land in severalty. They were neither identified nor enrolled at one or the same time; nor were they allotted lands together. Each of them upon complying with the provisions of the statutes in that regard became a citizen of the Choctaw Nation entitled to all the rights, privileges, and immunities of Choctaw citizenship, except that they could not participate in Choctaw annuities. This exception probably furnished the occasion for the provision in the statute that the Mississippi Choctaws should be carried "upon a separate roll." Some few may have removed at their own expense; many were removed at the expense of the Government, which appropriated $20,000 for that purpose. Many more were removed by and at the expense of divers persons who have intervened in this proceeding. A comparatively small number were removed to Indian Territory

through the instrumentality of Winton, and no claim is made by Winton and his associates for that expense.

The right to apply for identification, to be identified, to be enrolled, and ultimately to participate in the Choctaw estate, is one thing, involving different steps; and the possession and enjoyment of the estates granted is a different thing. It was the fact of removal to Indian Territory, the fact of being identified and subsequently enrolled, that actually fixed their status under the law. In these things Winton did not participate, and he makes no claim for any of them. He does, however, claim that he should be compensated for his services during a number of years while, as alleged, he was advocating or defending before the legislative body or its committees and others the rights of the Mississippi Choctaws. And without stopping at this point to question the accuracy of his claim, but merely stating it he claims that his efforts resulted in the legislation which made possible the enjoyment of a great estate and that, consequently, by accepting said estates the Mississippi Choc-
410 taws should be held to have assumed a liability to pay for said service upon the principle of quantum meruit.

As above suggested, it was as important to the said Indians that active measures be adopted to provide for their removal to and enrollment in the Choctaw country as it was to have legislation authorizing their removal. To hold that a people who, in the main, were destitute and ignorant of their rights, could by the mere act of exercising a legal right assume a liability, the extent and measure of which they could not know, would be unreasonable. A fatal defect in the contention lies in its failure to note the distinction between accepting the benefits of Winton's alleged labors and accepting the benefits of the law itself. Between his alleged labors and the enjoyment of said estate there were the necessary steps of identification, removal, and enrollment, and also the law itself by which benefits were secured. The statutes conferred the rights and extended the benefits of which the Indians availed themselves, and they did not by the mere act of exercising their legal rights become debtors to Winton.

It is probable that many of the Mississippi Choctaws who secured allotments never heard of Winton's alleged services. To be chargeable at all upon the theory of accepting the benefit of one's labors the party sought to be charged must be free to take them or not. There being no prior contract, express or implied, between the parties it can not be said that the acceptance and pursuit of rights accorded by the statutes are a voluntary acceptance of services rendered by an attorney in or about the enactment of the statutes. The party sought to be charged does not have to forego the benefits conferred by the law or accept them at the expense of a liability for services rendered prior to the enactment of the law. The acceptance by the Mississippi Choctaws of the right to identification, enrollment and allotments does not of itself and without more create any liability against them upon the principle of quantum meruit. It is a familiar principle that a man can not be forced to pay for what he has had no opportunity to reject. Coleman v. United States, 152 U. S., 96; Boston v. Dist. of Columbia, 19 C. Cls., 31; 9 Cyc. 252. The rule that

the party sought to be charged with taking the benefits of an attorney's services "must be free to take them or not "finds illustrations in Parshley v. Church, 146 N. Y., 583. In that case the plaintiff sued the church for professional services rendered. He had been employed by a minority of a board of trustees to present and prosecute charges against the pastor, and succeeded in his efforts in causing the pastor's suspension. Thereafter the church instituted proceedings to remove the pastor from the parsonage, and in resolutions authorizing such proceedings it was recited that the pastor had been removed under said charges. The plaintiff urged, among other things, that the church had thus accepted the result of his services and should pay for them, but the court held otherwise, upon the principle above stated.

Unless the relation of attorney and client, or some contractual relation existed between the defendant Indians and Winton at or before their enrollment, it can not be said to exist at all so far as this proceeding is concerned, and no such relation is shown. Meeting the conditions and complying with the requirements of the statutes, each of the Mississippi Choctaws was lawfully entitled to participate in the Choctaw estate without let or hindrance from those who claim to have promoted or suggested or aided in said legislation. As
411 each of them under the circumstances stated was free to act under the law a court can not place itself, so to speak, at the entrance to the said western country and say to said people that though they had a perfect legal right to enter they could only do so upon the payment to Winton of whatever sum the court might determine he deserved to receive from them for services performed prior to the enactment of the statute, or that having done so they assumed a liability. This would be like placing an embargo on the law. The statutes do not authorize such a limitation on the rights of the Indians, and the court can not place any. They accepted benefits authorized by the law.

Upon the said list of enrolled Mississippi Choctaws there are 1,578 individual names, and a description of the lands allotted to each. Winton had contracts with 696 of these, and he assisted in the removal of a small number of those with whom he contracted. In said list are the names of 137 enrolled under the terms of the statute as "new-borns." They were infants in fact, and many of them were probably not born when any of the services claimed for were performed. They constitute part of the Mississippi Choctaws who were enrolled and are named along with others as defendants in this proceeding. They did not and could not contract with Winton, and the mere act of accepting their patrimony could not raise up a liability on their part to Winton either as individuals or as members of a supposed group. But upon a claim asserted and maintained against the Mississippi Choctaws as a body or group these would have to be bound by the judgment, if any were rendered.

It is no answer to these views to say that Winton and his associates have received nothing for the services which they allege were responsible for the benefits secured to the Mississippi Choctaws. Winton's original idea was that he should contract with individual

Mississippi Choctaws, and he did so. That the contracts he made were subsequently declared void may have been his misfortune, but he changed their form and made other contracts, evidently recognizing that the surest way of creating the relation of attorney and client is by express contract. As to whose fault, if any one's, it was that more of this clients did not become enrolled and secure allotments of land, it is not necessary to inquire. More than one-third of the total enrollment had contracted with him in one or the other forms of contract exhibited in this proceeding. He had the right to contract with said people, and the law would furnish him a remedy to enforce valid undertakings. The facts, however, do not show a liability to him and his associates "against the Mississippi Choctaws" sued in this proceeding. The jurisdictional acts do not create any liability against them. Green v. Menominee Indians, 233 U. S., 558. It follows that the petitions should be dismissed.

412 IX. *Judgment of the Court.*

At a court of claims held in the City of Washington on the 29th day of May, A. D. 1916, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the claimants, the Estate of Charles F. Winton, deceased, et al., are not entitled to recover and shall not recover any sum in this action from the defendants, Jack Amos et al.; and, that the several petitions and intervening petitions in this cause be dismissed.

BY THE COURT.

413 X. *Applications of Intervenors for, and Allowance of, Appeals.*

Comes now the intervenor, J. S. Bounds, attorney in fact for T. A. Bounds, by W. W. Wright, his attorney of record, and notes an appeal to the Supreme Court of the United States, from the judgment of the Court entered herein on the 29th day of May, 1916, and respectfully prays the Court to allow said appeal.

W. W. WRIGHT,
Attorney of Record for J. S. Bounds.

GUION MILLER,
Of Counsel.

Filed August 25, 1916.

Allowed January 10, 1917.
BY THE COURT.

Comes now the intervenor John London, by M. S. Farmer, Jr., his attorney of record, and notes an appeal to the Supreme Court of the United States, from the judgment of the Court entered herein on the 29th day of May, 1916, and respectfully prays the Court to allow said appeal.

M. S. FARMER, JR.,
Attorney of Record for John London.

Filed August 25, 1916.

Allowed January 10, 1917.
BY THE COURT.

Come now the intervenors, Walter S. Field and Madison M. Lindly, by L. A. Pradt, their attorney of record, and note an appeal to the Supreme Court of the United States from the judgment of the Court of Claims entered herein on the 29th day of May, 1916, and they respectfully pray the Court to allow said appeal.

L. A. PRADT,
Attorney for the Intervenors,
Walter S. Field and Madison M. Lindly.

GUION MILLER,
Of Counsel.

Filed August 25, 1916.

Allowed January 10, 1917.
BY THE COURT.

414 Comes now the intervenor, J. J. Beckman, by W. W. Wright, his attorney of record, and notes an appeal to the Supreme Court of the United States, from the judgment of the Court entered herein on the 29th day of May, 1916, and respectfully prays the Court to allow said appeal.

W. W. WRIGHT,
Attorney of Record for J. J. Beckham.

GUION MILLER,
Of Counsel.

Filed August 25, 1916.

Allowed January 10, 1917.
BY THE COURT.

Comes now the intervenor William N. Vernon, by W. W. Wright, his attorney of record, and notes an appeal to the Supreme Court of the United States, from the judgment of the Court entered herein

on the 29th day of May, 1916, and respectfully prays the Court to allow said appeal.

W. W. WRIGHT,
Attorney of Record for William N. Vernon.

GUION MILLER,
Of Counsel.

Filed August 25, 1916.

Allowed January 10, 1917.
BY THE COURT.

Comes now the petitioner, Katie A. Howe, executrix of the estate of Chester Howe, deceased, by W. W. Wright, her attorney of record, and notes an appeal to the Supreme Court of the United States from the judgment of the Court of Claims entered herein on the 29th day of May, 1916, and respectfully prays the Court to allow said appeal.

W. W. WRIGHT,
Attorney for Petitioner, Katie A. Howe,
Executrix of Chester Howe, Dec'd.

GUION MILLER,
Of Counsel.

Filed August 25, 1916.

Allowed January 10, 1917.
BY THE COURT.

415 XI. *History of Proceedings After Entry of Judgment.*

On July 25, 1916, the claimant filed a motion for a new trial and a rehearing.

On July 25, 1916, the claimant filed a motion to extend the time for the filing of motion for a new trial, with brief in support thereof.

On July 26, 1916, the motion to extend time six months was overruled with the following indorsement: "A motion which does not comply fully with the rules having been made by claimants they are allowed until the 1st Monday in October, 1916, in which to amend their motion for a new trial and file brief as required by the rules."

On August 4, 1916, the defendants filed objections to the claimant's motion for a new trial and extension of time for filing brief.

On September 30, 1916, a motion was made for leave to file a motion for a new trial in re Walter S. Field, which was allowed by the Court Oct. 23, 1916, with the following indorsement: "Said motion and brief in support thereof to be filed on or before December 1, 1916."

On November 28, 1916, the said Field filed a motion for a new trial with brief in support thereof.

On December 11, 1916, the court overruled the motion of the claimant, filed July 25, 1916, and the motion of Walter S. Field, intervenor, filed November 28, 1916.

On January 8, 1917, a motion was filed for action on bill of exceptions filed by intervenors Walter S. Field and Madison M. Lindly.

On January 8, 1917, the claimant filed a motion under
416 Rule 90 for leave to file a motion to amend the findings of fact, and a request for findings of fact on certain questions of fact. This motion was overruled by the Court on January 29, 1917, with an opinion by Booth, J., which is as follows:

417 XII. *Opinion of the Court by Booth, J., on Motion Under Rule 90 for Leave to File Motion to Amend the Findings of Fact and a Request for Findings of Fact on Certain Questions of Fact.*

Filed Jan. 29, 1917.

Court of Claims of the United States.

No. 29821.

(Decided January 29, 1917.)

The ESTATE OF CHARLES F. WINTON, Deceased, and Others,

v.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

BOOTH, *Judge*, delivered the opinion of the court:

On Monday, January 8, 1917, in open court the attorney for the estate of Charles F. Winton, deceased, presented a motion entitled, "Motion under rule 90 for leave to file motion to amend the findings of fact and a request for findings of fact on certain questions of fact." Accompanying said motion was a short typewritten brief in which it is contended that the court erred in finding certain facts which claimant's motion seeks to strike from the record, and likewise erred in its refusal to find certain facts material to the issues presented, the purpose of the pleadings being frankly avowed by a citation of the case of Driscoll v. United States, 131 U. S., Appendix CLIX.

In a proceeding so extraordinary as the above the court would be fully warranted in overruling the motion without comment. In view of the importance of the litigation and lest some misapprehension might possibly obtain that the record in the case had not been the subject of consideration and deliberation during the more than ten years the same has been pending before the court, we

deem it an added judicial duty to carefully state the reasons which impel the court to deny the motion.

The first petition of claimants in the case was filed on October 11, 1906, some few months after the passage of the first jurisdictional act. Between this date and April 10, 1913, when claimants filed their first request for findings of fact and brief in support thereof, innumerable motions intervened, all looking toward the preparation of the record in the case. Several volumes of testimony were adduced and printed. In the request for findings embodied in the brief of April 10, 1913, nine specific requests were
418 made, covering in detail the services of Mr. Owen before all the public tribunals engaged in or within whose jurisdiction the subject-matter in controversy had been considered. The case was set for trial by the court on May 27, 1913, the date being subsequently changed upon the insistence of the attorneys representing conflicting interests to the first Tuesday of the October term, 1913. On October 14, 1913, the argument of the case began and continued until October 21, 1913, one whole week.

On December 7, 1914, the court, after diligently searching through a record of thousands of pages of testimony and briefs, in order to facilitate the disposition of the case as well as to specifically call attention to its conclusion in reference to the findings of fact and thereby set at rest the multitudinous objections and cross-objections found in the respective contentions, prepared at length and in great detail tentative findings of fact which were announced under the following order:

"Forty-five days from this date will be allowed to all interested parties to file objections to findings and briefs. Thirty days thereafter will be allowed the defendants and all other parties interested to reply thereto, and the case is set for a hearing on Tuesday, February 23, 1915."

The tentative findings made covered the issues then presented and embraced, as the court then and now believes, a very careful consideration of every single request for findings made by either the claimants herein or any of the numerous intervenors, it being the express intention of the court in so doing to give to every litigant ample time and opportunity to assail the findings made and suggest errors of commission and omission. Forty-three distinct and separate findings were submitted and so arranged as to state the case as the court viewed it upon the issue of fact. On January 21, 1915, claimants filed their objections to said findings, supported by an exhaustive brief. Objection was specifically made to all the tentative findings respecting the claim of Winton and associates, except findings 1, 2, 8, 9, 11, 13, 14, 16, 17, and 31. With these findings the claimants seemed to be content. On February 20, 1915, claimants herein filed an exhaustive reply brief to the defendants' objections to the tentative findings and vigorously contested every contention advanced, the claimants insisting upon additional findings as well as objecting to findings made. On the date stated in the court's order of December 7, 1914, a lengthy oral argument was heard in support of the objections filed by each litigant and the claimants

herein were given ample time in which to present their objections and argument.

On May 17, 1915, the court's first opinion was announced. The tentative findings had been modified in some respects and the court reviewed at length the issues of fact and law involved in the case. On August 9, 1915, the claimants filed a written motion for a new trial and to amend findings of fact found by the court in its opinion and findings of May 17, 1915. This motion to amend the findings and conclusions of law filed on August 9, 1915, by claimants, was accompanied with the request that the motion be ordered to the law calendar. The said motion and the brief and argument in support thereof comprised over 100 pages of printed matter.

419 The court on February 1, 1916, again heard an oral argument from claimants as well as all intervenors on their respective motions for amendment of findings and for a new trial. This argument consumed four full days of the court's term, being finally concluded on February 5, 1916. On the 29th of May following the court allowed in part and overruled in part the respective motions to amend findings, modified in some particulars its written opinion, in which the Chief Justice concurred in a separate written opinion, adhering, however, to its first determination respecting the legal issues involved.

On July 25, 1916, the claimants' attorney filed two typewritten motions, the first entitled "Claimants' motion for a new trial and a rehearing," and was in the following language:

"Comes now the plaintiffs and moves the court to grant a new trial or rehearing herein, and as reason therefor allege error of fact and error of law and newly discovered evidence in this: As to the newly discovered evidence, one Tams Bixby, who has heretofore testified in this case, has made a statement in a letter addressed to the Honorable Henry F. Ashurst, chairman of the Committee on Indian Affairs of the United States Senate, under date of September 23, 1915, of great importance to the interests of these plaintiffs and leads them to believe that said statement, together with such evidence as Mr. Bixby no doubt can give upon proper examination in the light of said statement, would cause the court to materially change the findings of fact in the particulars mentioned in Mr. Bixby's said letter of September 23, 1915. Said letter is printed commencing on page 448 of the hearings before the Committee on Indian Affairs of the United States Senate, 64th Congress, 1st session, on H. R. 10,385, being the Indian appropriation bill for the fiscal year ending June 30, 1917, and it is respectfully referred to and prayed to be made and considered a part hereof.

"The errors of fact and errors of law will be more fully and definitely pointed out in a brief to be filed in support hereof, in accordance with a motion this day made for leave to extend the time for the filing of a brief in support of this motion."

The second motion, entitled "Plaintiffs' motion to extend the time for the filing of motion for a new trial and brief in support thereof," was in the following words:

"Comes now the plaintiffs and moves the court to extend the time

six months beyond the time allowed for the filing of a motion for a new trial and brief in support thereof, as required and provided for in rules 90 to 95, inclusive, for the reason that it is impossible to comply with the terms of said rules in the sixty days therein allowed, owing to the fact that the attorney for the plaintiffs has not had time to confer with his clients, particularly the plaintiff Owen and Mr. Winton's administrator."

The court being then in recess, the motion went to the Chief Justice, in accordance with the rules of the court, and the following entry was made by him upon the motion:

"The motion to extend six months is overruled. A motion which does not comply fully with the rules having been made by the claimants, they are allowed until the first Monday in
420 October, 1916, in which to amend their motion for a new trial and file brief as required by the rules."

The docket entries covering this matter show that on July 25, 1916, the same day the motion was filed, a copy of the same was duly served upon the defendants, and thereafter, on August 4, 1916, the defendants filed their brief in opposition thereto. The court was in session on the first Monday in October, 1916. The claimants filed no brief, did not appear in court, did not ask any further time, and took no steps to comply with the rules of the court. The motion was finally overruled by the court on December 11, 1916, nearly five months after it had been filed.

Rules 94 and 95 of the court provide:

"94. A motion by the claimant upon the ground of newly discovered evidence will not be entertained unless it appear therein that the newly discovered evidence came to the knowledge of the claimant, his attorney of record or counsel, after the trial and before the motion was made; that it was not for want of due diligence that it did not sooner come to his knowledge; that it is so material that it would probably produce a different judgment if the new trial were granted, and that it is not cumulative.

"Such motion must be accompanied by the affidavit of the claimant or his attorney of record, setting forth:

"First. The facts in detail which the claimant expects to be able to prove, and whether the same are to be proved by witnesses or by documentary evidence.

"Second. The name, occupation, and residence of each and every witness whom it is proposed to call to prove said facts.

"Third. That the said facts were unknown to either the claimant or his attorney of record, and, if other counsel was employed at the trial, were unknown to such counsel until after the close of the trial.

"Fourth. The reasons why the claimant, his attorney of record, or counsel could not have discovered said evidence before the trial by due diligence.

"95. Motions for a new trial must also be accompanied by the brief of the moving party, a copy of which must be served upon the opposing party, who may file his brief in response thereto. The motion will be considered by the judges in conference upon such

briefs and affidavits, if any, and will there be decided or sent to the law calendar for argument."

From this record alone the court is fully warranted in not only overruling the request but the motion made as well. The claimant, for reasons undisclosed to the court, failed to avail himself of a privilege extended by the rules, notwithstanding he was given the unusual period of nearly five months so to do.

The motion itself is, however, upon the merits, devoid of favorable consideration. Mr. Tams Bixby was examined by the defendants as a witness in this case on September 8, 1908. The then chief attorney for the claimants was present in person at the taking of said deposition and cross-examined the witness in great detail. In fact, the testimony of Mr. Bixby consumes 30 pages of the printed record in this case, most of which is cross-examination. The
421 witness was vigorously interrogated as to the position of the Dawes Commission from every possible angle of this controversy, and a careful examination of his testimony must lead to the inevitable conclusion that no material fact escaped being called to his attention.

Aside from the very obvious fact that the court's findings show specifically the proceedings of the Dawes Commission and their attitude toward the enrollment of the Mississippi Choctaw Indians, it is to be especially noticed that claimants' attorney now insists upon a reexamination of the witness because of the belated information coming to him at least on or before July 25, 1916, in a letter written by Mr. Bixby on September 23, 1915. This case was argued upon a motion for a new trial and to amend findings February 1, 1916, about four months after the letter came into existence, and absolutely no valid reason has been assigned for the failure to produce it then. The letter itself would, of course, be inadmissible, but, granting arguendo that it is, the court in considering the same can find no fact stated which would in any manner disturb the judgment rendered. The Dawes Commission was charged with certain duties by acts of Congress, its jurisdiction was circumscribed and its duties defined by law, and whenever, as in this case fully exemplified, it failed in detecting the intent of Congress as expressed in the acts governing the commission, supplementary legislation corrected the error and righted the wrong. Mr. Bixby's individual opinion is in nowise in issue, and his official conduct must be judged from the official reports of the commission of which he was a single member; these we have set forth in detail.

The motion was overruled without argument, as the docket entries attest. It in no important particular complied with the well-known rules of the court, and was otherwise devoid of merit. This case unfortunately intervenes to halt important proceedings connected with the management and control of the Indian lands allotted. It has been considered, as before observed, for more than 10 years. If litigation is ever to close and causes ever to be finally determined, belated motions tending toward interminable delay must at least comply with the rules of the court, themselves liberal and obviously just, before the court would be justified in reopening a record already

extending to thousands of pages of printed matter. The defendants filed a brief in opposition thereto; the claimants never afforded the court any further enlightenment than the brief facts set forth in the typewritten motions herein reproduced.

Treating the motion now at issue, without first going into the specific requests made, we must first pause to consider the same from the standpoint of substantive right, keeping in view the present state of the record, the complications which must follow, the rules and practice of the court, and what, if any, injustice follows from its denial, recognizing our right to grant or deny the same in accord with an exercise of sound judicial discretion with respect thereto.

The claimants, in their three preceding requests for findings of fact, formulated the same in narrative form; this is the first motion wherein alternative requests for finding as to specific facts is found.

422 Heretofore, then, it is apparent from the record, claimants have been content to follow the usual and ordinary forms of pleading employed in the presentation of cases to the court. It is likewise obvious from the express allegations of the motion that the requests now made have not heretofore been requested in either narrative or alternative form, and the reason for this omission does not appear.

Again, it is pertinent to observe that the last opinion of the court in the case was announced May 29, 1916, and it was not until January 8, 1917, that this motion was filed, although the court has been in session, with the judges present, since the first Monday in October, 1916, and the clerk's office is open every day, except legal holidays, for the reception and filing of motions.

The case itself from the pleadings and record concerns not alone the rights of the claimants making the present motion but at least eighteen other claimants, each preferring a claim for compensation for personal services rendered the same Indians, many of whom have taken an appeal from the judgment of the court to the Supreme Court, and the record therein is now in course of preparation. The case therefore presents a somewhat anomalous condition in that a large number of the parties have applied for appeals to the Supreme Court, and these applications were granted on December 11, 1916, while the claimants herein by their motions herein filed after the appeals were allowed would, if the motions be granted, keep the case in this court, and thus as to some the case would be in the Supreme Court and as to others the same case would be in this court. In the event of permitting the allowance of this motion, notice must be served upon each intervenor and the defendants as well, time must be extended for the filing of additional briefs, and an oral argument, despite the fact that the claimants have stated they did not desire one, must be had and the final disposition of the case postponed for an indefinite period. The case, as above set forth, has been pending for ten years, and the docket entries disclose a list of motions filed running well into the hundreds. If litigation is to reach a finality within a reasonable length of time and an argument going in support of such a contention is at all available, it is extremely pronounced and effective in the present instance. In ordi-

nary court procedure it is quite unusual to persistently move for a rehearing after a cause has been finally decided upon two previous motions for a new trial.

Rule 90 of the Court of Claims is consonant with the usual and ordinary court rules designed to regulate court practice and promptly dispatch court business. It provides in substance that motions for a new trial shall be filed within 60 days from the date of judgment and expressly limits the number of said motions except by leave of court. The exception in the rule is neither extraordinary nor difficult to understand. It was never intended, and has never been so construed, as at all permissive of innumerable motions designed to bring in review for a second, third, fourth, or fifth time the findings of the court upon allegations of error made by the parties and in most instances suggested by the findings theretofore made. The reservation was inserted for the express purpose of enabling litigants to point out some obvious error, some substantial omission which they may earnestly believe would affect the decision of the court or redound to their benefit. It is not susceptible of a contention
423 that it is available to bring again in review the whole case in all its aspects, or to be used as an instrumentality to procure another argument of the whole controversy upon the same record. Ample opportunity is afforded both claimants and defendants to present their requests for findings and to object to and propose amendments to the facts found by the rules of this court. There is no rule of the court which in any manner restricts or denies the rights of litigants on appeal to the Supreme Court or works to their injury in making up the record in the case. Nineteen court days upon various occasions and in response to various requests were consumed in the oral presentation of this case. To even approximate the volume of motions and papers filed herein would be almost impossible. Suffice it to say that we have no hesitancy in averring that the record shows that of all the involved and tedious cases submitted to the court, no parties litigant have been accorded a wider latitude in pleadings and motions or been given a more careful and patient consideration of the innumerable conflicting interests than in the present cause.

The rules of the Supreme Court relative to findings of the Court of Claims are to be found on page VII of the 9th Wallace Reports. Rule IV adopted by the Supreme Court provides that the Court of Claims shall make and file their findings of fact and their conclusions of law in open court before or at the time they enter judgment in the case. Rule V provides as follows:

"In every such case, each party, at such time before trial, and in such form as the court may prescribe, shall submit to it a request to find all the facts which the party considers proven and deems material to the due presentation of the case in the findings of fact."

These rules were made at the December term, 1869, of the Supreme Court and have been followed since.

In United States v. Adams, 9 Wall., 661, the appellants resorted to certiorari in an effort to bring certain facts alleged to be part of the record in this court before the Supreme Court, the Court of Claims

having omitted to find them. The Supreme Court denied the writ, but issued an order remanding the case with instructions to find whether or not certain facts were proven in the record. In deciding the case the court said:

"But we can not give the Court of Claims any directions as to what finding it shall make, or how it shall proceed to make up its findings on the points in question. If that court should refuse, with the proper evidence before it, to find a material fact desired by either of the parties, the proper remedy would be to make a request that such finding be made, and to except in case of refusal. Perhaps an additional rule on the subject would make the rights of the parties and the duty of the court less ambiguous than they now are." See rule, supra.

In Mahan v. United States (14 Wall., 109) the appellant in the Supreme Court sought to invoke the rules above set forth in an effort to have the evidence in the Court of Claims brought before the Supreme Court for review, predicating the contention upon a refusal of the Court of Claims to find a specific fact in the specific way requested. The court said:

424 "But it was never supposed that the party would ask or the court must find the fact to be as the party claimed it, and if they did not that he could, for that reason, bring the whole testimony here to show that he was right.

"The rule does say that if the Court of Claims refuses to find as prayed the prayer and refusal must be made part of the record. The remedial purpose of this rule is that when a party has, in writing, indicated a specific question of fact on which he desires the Court of Claims to make a finding, and the court has neglected or refused to do so, this court may be able to determine whether the question is one so necessary to the decision of the case that it will send it back for such finding.

"In the present case the Court of Claims did make a very explicit finding on the question of fact presented by the request of plaintiff, and this is all the rule required, though the finding is contrary to her averment."

In United States vs. Driscoll, supra, the question of proper procedure under the foregoing rules was directly passed upon, and in refusing an order of remand the Supreme Court said:

"The object is to present the question here as upon an exception to the ruling of the court below in respect to the materiality of the fact. For that purpose it must have been submitted to the court in a written request, as provided by the rule. Nothing of the kind appears here. While other requests were made, this was not, and the record upon its face does not show that the court has omitted to pass upon any fact necessary to the decision of the case."

From the view point of established rules both in the Supreme Court and in this court, and in the light of the decisions of the Supreme Court cited, it is manifest that the motion herein could be overruled for several reasons: First, because it comes too late; second, it seeks in some phases to present new issues; third, it is not supported by briefs; and fourth, no reason is assigned for failure to comply with

the rule. But there is an additional reason. It is to be noted that the claimants' present request is "for findings of facts on certain questions of fact." Departing from the form in which requests are usually made—under the rules of the court, in narrative form—the requests in each instance are put in interrogative form—"whether or not." The purpose of a request for findings is to find the facts material and pertinent to the issue. It certainly can not be said to be equally pertinent and material whether the answer be in the affirmative or the negative, because if it be not a fact then its importance at once disappears. As is very well stated by the attorney for the claimants herein in one of his briefs, it is rarely proper for the court to find a "negative fact." Without regard, however, to that phase of the matter, the form in which these requests are propounded are not without some precedent. In the case of Union Pacific Ry. Co. v. United States, 116 U. S., 154, requests for findings made in substantially the same form as the one stated in the present motion were passed upon by the Supreme Court. A material difference, however, between the request here made and that in the case just referred to is that in that case the requests were made on or before the trial and conformed in that respect to the rule of the Su-
425 preme Court. The present motion does not conform to the rule of the Supreme Court in that it is made after the trial and after the court has decided the case, as above stated. In the Union Pacific Ry. case after the requests had been made in substantially the same form as those now under consideration the case went to the Supreme Court, and a motion was there made by the claimant to require the Court of Claims to send up the evidence or to specifically find on certain requests for findings made by one of the parties and not passed upon specifically and in detail by the court. In refusing said motion upon that contention of the claimant the Supreme Court said:

"The special findings which were requested and refused related to mere incidental facts which amounted only to evidence, and were therefore inadmissible as a part of the record to be sent here. They were in reality nothing more than requests for a finding of what the evidence was. The parties seem to have followed the suggestion on the former appeal, and, after looking over the entire field of service they brought in everything which, in their opinion, could be of use to the court in determining what would be a reasonable compensation for the services rendered, subject to the requirement of the statute that it should not be more than was paid to private parties for the same kind of service. The question to be determined was one of fact as much so as the amount of recovery in any action quantum meruit. A conclusion could only be reached by considering all the testimony, weighing the facts, and estimating their comparative value as evidence. This presented in no just sense a question of law. Every fact that was proven according to the motion was simply evidence, and as evidence had performed its entire office when the facts were found. It has no place in the record which is to come here for review."

Again, in McClure v. United States, 116 U. S., 145, a motion was

made to order up the evidence from the Court of Claims, or, in the alternative, to direct the court to make specific findings of fact. In that case it was said (p. 151):

"The statement of facts on which this court will inquire, if there is or is not error in the application of the law to them, is a statement of the ultimate facts or propositions which the evidence is intended to establish, and not the evidence on which those ultimate facts are supposed to rest. * * * The statement must be sufficient in itself, without inferences, or comparisons, or balancing of testimony, or weighing evidence, to justify the application of the legal principles which must determine the case. It must leave none of the functions of a jury to be discharged by this court, but must have all the sufficiency, fullness, and perspicuity of a special verdict. If it requires the court to weigh conflicting testimony, or to balance admitted facts, and deduce from these the propositions of fact on which alone a legal conclusion can rest, then it is not such a statement as this court can act upon."

See also the court's references to the case of United States v. Pugh, 99 U. S., 265, and The Francis Wright, 105 U. S., 381, 387. Referring to the last-named case the Supreme Court said:

"But in the Francis Wright, 105 U. S., 381, 387, where the question was as to the kind of facts the court could be required to
426 put in its findings, we said it did not include 'mere incidental facts which only amount to evidence bearing on the ultimate facts of the case.' Questions depending on the weight of evidence must be conclusively settled below."

In relation to the question of substantive right and the denial of justice, which go direct to the question of the exercise of sound judicial discretion, recurrence must be had to the opinions wherein the purpose and intent of the rules sought to be involved fully appear. It is manifest from what the Supreme Court said in each of the opinions cited that the purpose of the rules is to preserve an exception in behalf of litigants in the event this court refuses, "with the proper evidence before it, to find a material fact desired by either of the parties," the remedial purpose of the rule being to enable the Supreme Court to determine whether the omitted question of fact is one so necessary to the decision of the case that it will be remanded for that purpose. The issue of fact presented by the record in this case lies within a very narrow compass, notwithstanding the volume of the record. The suit is to recover from the defendant Indians compensation for services rendered in their behalf in the matter of their claim to citizenship in the Choctaw Nation, the court being directed by the special grants of jurisdiction to render judgment upon the principles of quantum meruit. Confining ourselves at present to the claimant's petition alone, what facts must be established to bring them within the act? The court need not answer the inquiry in any other manner than to refer to the record made by the claimants themselves. With most commendable detail, as the findings of the court show, the claimants made up a record, disclosing beyond doubt that a large number of individual Mississippi Choctaw Indians by written contracts of employment engaged the claimants

to advocate their cause, speaking broadly, at any time and any place where it might be of service to them in securing a claimed treaty right. Testimony was adduced relative to the character of service rendered and when and where it was rendered, what legislation was advocated, and what was passed, and other testimony deemed by the parties necessary and proper to sustain their contentions.

At least as early as March 1, 1907, other claimants filed motions for leave to intervene in the case, themselves claiming rights under the jurisdictional act, a claim so persistent that Congress on May 29, 1908, passed a second jurisdictional act enlarging the scope of the grant and including by particular names as well as under the general term "associates" a large number of persons. Thereafter, in making up the record under their individual petitions, an acute, prolonged, and exceedingly disputatious record of facts confronted this court, not now speaking of the great volume of testimony introduced by the defendants contradicting the right of these claimants and each intervenor. From this record of conflicting testimony the court is charged by a positive rule of the Supreme Court to make up its findings "in the nature of a special verdict, but not the evidence establishing them." In the discharge of this duty we attempted to follow the common law rules of evidence and to find as near as possible the ultimate facts reached after a careful analysis of the evidence
427 in the case. The facts as found are not in all respects as the claimants averred them to be, nor are we required to find specifically as to a claimant's averment in this respect. They are the special verdict of this court sitting as a jury. The motion now under discussion challenges this verdict, not by citing here and there an omission of a material fact, but by a series of inquiries it seeks to sustain a contention that the facts should have been found exactly as the claimants averred them to be.

If from the findings made by the court the Supreme Court on appeal finds the record insufficient because of the omission or refusal to find material facts, to review the contentions of the respective parties, it has been the rule of the court of its own or in response to claimants' motion to promptly remand the case. This indeed is the full import and meaning of the rules. The court has found the facts as it believes them to be, and has further determined that in its judgment all material questions of fact have been found, and this result has been reached after repeated motions for new trial. The Supreme Court has never remanded a case for additional findings of fact solely because of the allegations of the parties that this court has misconceived the record, misjudged the testimony, and arrived at a verdict contrary to their view of the facts. Under our jurisdiction, sitting as a jury in this respect, the duty under the law is peculiarly ours of weighing and analyzing the testimony, according to it the probative effect to which we believe it entitled, and then expressing our verdict in written findings of fact. If in the course of this proceeding we omit material facts the way is open to correct the error, but the verdict of the court can only be challenged by a motion for a new trial.

The two cases cited are directly apposite, for in each instance requests were made before the trial of the case which complied in

every particular with the rules, whereas in this instance we are asked to consider a very tardy motion, embodying the consideration of a record of testimony heretofore examined, reexamined, and carefully analyzed.

As a further means of ascertaining the issue now raised as to the omission of material findings, we find it indispensable to examine closely the specific requests now for the first time propounded. Before doing so, however, a general observation as to some of the language used in the requests is necessary. It is asked and frequently repeated whether or not the claimants "as representatives of the Mississippi Choctaws" did not do so and so "in behalf of the Mississippi Choctaws." This expression "The Mississippi Choctaws" standing alone is decidedly misleading. The issue, the real contest in this case, is the question as to whether or not the claimants represented or had authority to represent all the Mississippi Choctaw Indians. The claimants herein have not shown such general employment; on the contrary, they introduced numerous contracts between themselves and individual Mississippi Choctaws and upon these contracts relied for authority from these individuals to represent them. A single intervenor has relied upon a band or tribal contract. Therefore it is apparent that the use of the general designation always applied to the whole body of the Choctaw Indians residing in Mississippi is not to be loosely construed in the consideration of the
428 present motion. It must be distinctly understood that the court in treating the requests now made approaches them all with the understanding that any reference made in this general way is limited to such individual Mississippi Choctaw Indians as employed the claimants by express agreement to represent them. We have not found, and the evidence does not warrant us in finding, that any single claimant had authority to or did represent the whole number residing in Mississippi.

Another observation of vital importance to the issues in the case becomes indispensable because it finds its way into the proposed requests by reason of the character of the services rendered by the claimants for which pay is claimed. The claim of the Mississippi Choctaw Indians to citizenship in the Choctaw Nation was never referred to a court for adjudication and determination. The Congress of the United States concluded the controversy by the enactment of various laws covering the claimed right, and it is for services in connection with the passage of these laws that the claim in issue arises, what is commonly called a "legislative service." For appearances before committees of Congress and other departments of the Government in behalf of a client interested in the passage of legislation, an attorney may lawfully charge fees, but such a character of service is strictly limited. No compensation may be charged or collected, no contracts in reference thereto can be enforced, for any service extending in the slightest degree beyond this well-defined zone of limitation. The personal solicitation of aid from an individual legislator, aid rendered an individual legislator, representations and arguments made for or before an individual legislator, no matter how convincing or under what circumstances, can not under

the law be made the basis of a charge for professional services. Trist v. Child, 21 Wall., 450. The court in finding the facts and reaching its conclusion of law upon the issues involved in the case has adhered with inflexible rigidity to the principles of law laid down in Trist v. Child, supra. We have further elaborated upon this subject in speaking to the requests of claimants wherein in our judgment it is directly in issue.

For the sake of convenience in the orderly discussion of the requests, we will first set forth the request and follow it with the court's comments thereon.

IX.

Whether or not the original contract, made June 23, 1896, and modified July 23, 1896, between Charles F. Winton and Robert L. Owen, provided that said Owen was to represent the claims of the Mississippi Choctaws before the proper officers of the United States and Indian Governments, and in which representation the said Winton was to assist and co-operate with the said Owen?

Finding IX of the court is exactly the same as it appeared in the tentative findings of December 7, 1914. Counsel for claimant, in his brief filed January 21, 1915, made no objection to the same, and in open court on the oral argument stated "no objections."

In making up the appendix to the findings of the court we experienced more or less confusion with reference to copies of the contracts mentioned in this request. An examination of Exhibit No. 11 as printed in the record disclosed a contract dated June 2, 1896, the acknowledgment dated June 23, 1896. This, of course, aroused some doubt as to the precise identity of the paper, and we sought to find the originals among the files in the case, in which respect we failed. The finding of the court meeting with no objection upon the first hearing, we did not further pursue the search. When the present motion was brought to our attention, and the finding assailed, we again searched the record for copies of or the original contracts. Failing to find either, we authorized a notice to each of the attorneys of record in the case to return at once to the files of this court all papers of whatever character which had been made a part of the record herein, and in response to said motion the original contracts mentioned were produced, the court being informed at the time, viz, January 23, 1917, that they had been found among the office files of Mr. William E. Robeson, now deceased, who up to the time of his death was the chief attorney for the claimants. The contracts provide in terms as follows:

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Contract.

Know all men by these presents: That I, C. F. Winton, for and in consideration of one dollar and other valuable considerations, the receipt whereof is hereby duly acknowledged, do hereby contract and agree that I will, with due diligence, proceed to Mississippi and

Louisiana, to secure a contract with such Indians as may be entitled to participate in any distribution of lands or moneys of the Choctaw and Chickasaw Nations; that I will arrange to secure the evidence, powers of attorney, and contracts, then and there, as prescribed by Robert L. Owen; and for and in consideration of the premises I am entitled to receive one-half of the net proceeds of such cases as I personally obtain and send in to said Owen, and will be interested in none others.

I further contract and agree to assist J. E. Reynolds to work a part of such country, in fair division, understanding that said Reynolds has a similar contract with said Owen; and said Owen is to prepare the forms necessary for this operation, and to represent the claims of these people before the proper officers of the United States or Indian Governments, having my assistance and cooperation when and where called for, being authorized to obtain other assistance on this account.

In witness whereof, I hereto attach my hand and seal, this the 23rd day of June, 1896.

(Signed) C. F. WINTON.

STATE OF KANSAS,
City of Wichita:

Be it remembered that on the 23rd day of June, 1896, personally appeared before me C. F. Winton, to me well known, who having been duly sworn, acknowledged the execution of the foregoing contract as his free and voluntary act for the purposes therein mentioned.

Witness my hand and official seal the day and year first above written.

[SEAL.] (Signed) J. N. RICHARDSON,
Notary Public.

My commission expires November 16, 1896.

Contract.

This contract witnesses that C. F. Winton for valuable consideration, duly acknowledged, contracts that he acts as attorney in the Mississippi, etc., Choctaw and Chickasaw claims under agreement with R. L. Owen that said Owen has half interest in said contracts in contemplation without exception and in event of any accident to Winton is fully authorized to take them up as attorney in place of Winton. Witness whereof I hereto attach my hand and seal.

(Signed) C. F. WINTON.
ROBT. L. OWEN.

Cleveland, I. T.

430 Received of R. L. Owen fifty dollars on a/c of expenses to Mississippi, etc., in the citizenship claims of the Choctaws and Chickasaws. Witness my hand this 24th July, 1896.

(Signed) C. F. WINTON.

Cleveland, I. T.

We have set them out in full as an evidence of their consideration by the court with respect to their materiality and as to whether in the exercise of a sound judicial discretion we should reopen the case and make them now, as we formerly intended to do, a part of the appendix to the findings. It is apparent from the instruments themselves that they are immaterial and incompetent for any other purpose than establishing the relationship between Mr. Winton and Mr. Owen. The contracts are private agreements between Mr. Winton and Mr. Owen to which the Mississippi Choctaw Indians were not a party in any way; they were made prior to the employment of Mr. Winton and Mr. Owen by any individual Mississippi Choctaw Indian, and concern alone a division of service and fees for professional service, at the time prospective, and impose absolutely no binding obligation upon any other persons or property except the parties signatory thereto. That Winton and Owen were associates is a conceded fact found by the court; under no circumstances can they be made the basis of a recovery for professional services against the defendant Indians.

X.

A. Whether or not the contracts referred to in the third paragraph of the court's finding 10 were taken for Winton and associates and some of them taken in the name of Winton?

Fact is immaterial. No dispute in the record concerning the association of Winton, Owen, and Daley or that the Daley contracts were taken in behalf of them. The contract is set forth in the appendix.

B. Whether or not the second series of contracts referred to in finding 10, page 5, of the court's finding embraced 2,000 persons instead of several hundred, as stated in said finding?

Not sustained by the record. No evidence of 2,000 persons. Record justifies the approximation made.

C. Whether or not all of the contracts referred to in the last paragraph of the court's finding 10 are set out in the appendix to the findings, and

Whether or not the first series of contracts taken in the name of Winton contained a provision as follows: "do hereby contract and agree that Charles F. Winton, of Vinita, Indian Territory, that he shall be authorized to represent us in securing recognition of our citizenship in the Choctaw Nation, and the right to participate in the distribution of land or money in case the same should be brought about; * * * and that he is hereby authorized under the two powers of attorney executed to him this day, and which are made a part hereof, coupled with an interest, to represent us before any of the authorities of the United States, or before any authorities of the Choctaw Nation, where it may be necessary authorizing him
431 where necessary to secure the cooperation of other attorneys, under the authority of this contract, and to incur in our behalf such expense as may be necessary in prosecuting such claims."

When the above finding was made by the court, as clearly indicated by the language thereof, it was our intention to set out in the appendix to the findings a copy of the contract mentioned. Upon search through the record, however, the court was unable to find therein a copy of this particular form of contract, and hence it had to be omitted. The question now raised by the request not having been heretofore raised in motions of similar import filed by the claimants, the court assumed that the finding was satisfactory. On February 24, 1916, the claimants' attorney transmitted a form of contract to the court by letter, in which he said: "I am sending you the inclosed contract which, I think, is the form of the original Winton contract. I don't believe it will be possible to locate the contracts, unless they be found in the clerk's office, Department of Justice or Department of Interior." This communication was addressed in response to a request made upon said attorney by the court in our effort to supply this apparent omission in the findings. The contract transmitted bore the date of August 19, 1896, and left the court in doubt as to whether it was one of the original contracts of employment.

Last request concluded by discussion of same under Finding IX.

XI.

A. Whether or not James S. Sherman was chairman of the Committee on Indian Affairs of the House of Representatives and not Representative Curtis, at the time and as stated in the third paragraph of the court's finding 11?

Too frivolous to merit serious consideration. Representative Curtis testified as follows:

"Question. Please state what Member of Congress, if you know, took the leading part in securing legislation favorable to the rights of the Mississippi Choctaw tribal lands in Indian Territory.

"Answer. While I was a Member of the House and a member of the Committee on Indian Affairs, I was chairman of the subcommittee having charge of the affairs in the Indian Territory, or, rather, the affairs of the Five Tribes. As such chairman, I had charge of the legislation affecting the Five Tribes, and the first person to bring to my attention the Mississippi Choctaws was Hon. John S. Williams now a Senator from Mississippi, then a Member of the House from that State."

B. Whether or not Robert L. Owen, early in 1897, when he "spoke" to Honorable John Sharp Williams and submitted to him a copy of the Dancing Rabbit Creek Treaty, as stated in the second paragraph of finding 11, was at the time recognized by Mr. Williams as speaking in the capacity of an attorney at law in the behalf of the Mississippi Choctaws, and was then requested by Mr. Williams to prepare and submit to him a brief, letter, or written argument on the question of the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation and with which request Mr. Robert L. Owen complied and furnished Mr. Williams with such a brief?

432 The fact requested is immaterial. Neither in virtue of an express contract nor upon a quantum meruit can a claim for compensation for professional services rendered by a claimant be augmented, much less predicated, upon the personal solicitations of and from a public Representative. The court has considered all testimony tending even in the direction of a claim for pay involving personal solicitation as immaterial and incompetent. In Trist v. Child, 21 Wall., 450, the Supreme Court said:

"We entertain no doubt that in such cases, as under all other circumstances, an agreement express or implied, for purely professional services is valid. Within this category are included drafting the petition to set forth the claim, attending to the taking of testimony, collecting facts, preparing arguments, and submitting them orally or in writing to a committee or other proper authority, and other services of a like character. All these things are intended to reach only the reason of those sought to be influenced. They rest upon the same principle of ethics as professional services rendered in a court of justice, and are no more exceptionable. But such services are separated by a broad line of demarcation from personal solicitation, and the other means and appliances which the correspondence shows were resorted to in this case."

The court regards the request and ones of similar import as immaterial. Whether Mr. Williams regarded Mr. Owen as attorney for the Mississippi Choctaws is likewise immaterial and quite surely incompetent if elicited to establish the case referred under the jurisdictional acts.

C. Whether or not in 1897 Robert L. Owen presented an oral argument and written brief to the Honorable John Sharp Williams, then a Representative in Congress from the district in which the Mississippi Choctaws then resided, on the question and in behalf of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation and in favor of their rights to participate in the partition of the lands of the Choctaw Nation under the provisions of article 14 of the Dancing Rabbit Creek treaty between the United States and the Choctaw Nation, of September 27, 1830?

Whether or not the written brief submitted by Mr. Owen to Mr. Williams was in accordance with the latter's request?

Inquiry immaterial. Subject covered by discussion under prior request.

D. Whether or not early in the year 1897 Robert L. Owen submitted an argument to Honorable John Sharp Williams, then a Representative in Congress from the 5th congressional district of Mississippi, wherein practically all full-blood Choctaws in Mississippi then resided, and, as the result of said arguments and documents submitted by him, Mr. Owen, or the interest created thereby, Mr. Williams became convinced, contrary to his original opinion, of the rights of said Mississippi Choctaws to share in the privileges of Choctaw citizens in the Choctaw Nation under article 14 of the Dancing Rabbit Creek treaty, entered into September 27, 1830, by the United States and the Choctaw Nation?

433 Materiality disposed of by prior discussion. Trist v. Child, supra.

E. Whether or not in February, 1897, during the consideration by the Committee on Indian Affairs of the House of Representatives of House bill 10372, which recognized the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, Robert L. Owen appeared and made an argument in behalf of the Mississippi Choctaws to citizenship in the Choctaw Nation and the said committee made a favorable report on said bill, which report, in accordance with the request of the committee, was drawn and prepared by Mr. Owen.

The inquiry here propounded is fully covered by the facts found by the court in Finding XV.

F. Whether or not it is a fact that the Congressional Record fails to show any bill or resolution introduced by Honorable John Sharp Williams in behalf of the Mississippi Choctaws or any remarks whatever made by Mr. Williams relative to the Mississippi Choctaws from 1896 to March, 1899.

Request is obviously immaterial. If the purpose is to impeach the testimony of Mr. Williams, no proper foundation is laid. Mr. Williams gave his deposition and was cross-examined in extenso, claimant's counsel being present.

To ask this court to state as a finding of fact that it has searched the Congressional Record covering a period of three years for the purpose of discovering the nonexistence of an alleged fact comes very close to an absurdity. The case does not involve the simple question of what Mr. Williams did not do. The issue presented concerns the positive fact, What did he do?

XII.

Whether or not Senator H. P. Money and Senator Walthall in 1896 acknowledged the receipt of letters from Charles F. Winton praying them to assist the Mississippi Choctaws;

Whether or not they pledged their support in their replies to the said Winton—that is, that they would assist the Mississippi Choctaws.

Immaterial and incompetent under decision of the Supreme Court in Trist v. Child, supra. The letters mentioned should have never gone into the record; they are clearly inadmissible and found their way in by an attempt to make them exhibits to an oral examination of a witness other than the writer of the letters. They were never properly identified and no rule of evidence covering the introduction of papers of this character was observed. The letters upon their face show that they were not even written to the witness who presented them.

XVI.

A. Whether or not Robert L. Owen drew House bill 10372 recognizing the rights of Mississippi Choctaws to citizenship in the Choctaw Nation and caused the same to be introduced in Congress.

434 The record discloses as found by the court that H. R. 10372 was introduced in Congress by Representative Allen. The fact elicited is immaterial under decision in Trist v. Child, supra.

Whether or not the amendment proposed by Senator Walthall to the Indian appropriation act of 1897 was an amendment in the same words as House bill 10372 recognizing the rights of the Mississippi Choctaws to citizenship.

The request is not for the finding of a fact. The inquiry elicits a conclusion. The findings of the court show the facts.

Whether or not said amendment was furnished to the said Walthall by Robert L. Owen.

Immaterial. Record furnishes no decisive evidence as to request. Service gratuitous under Trist v. Child, supra.

B. Whether or not the provision of the Indian appropriation act of June 7, 1897, set out in finding 16, p. 8, of the court's findings, was inserted in said appropriation act in the Senate as the result of an effort made by Robert L. Owen and associates to have enacted a provision more favorable to the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation?

Facts found by the court in reference to this legislation are stated in the court's Finding XVI.

The court in any event can not ascertain from the record that legislation resulted from individual effort. The Congress of the United States acts deliberately. The terms and provisions of any laws passed by Congress can not be attributed to any outside influence or said to result from any personal advocacy of the same, and a claim for pay for legislative services goes no further than the specific things usually performed by an attorney in a court of justice, the very precise steps mentioned by the Supreme Court in Trist v. Child, supra. The court can only find from the records of Congress what transpired with reference thereto. There is no competent evidence in the record upon which the court can predicate a finding in response to the above request. The fact sought to be elicited is a conclusion and not the statement of a fact.

XVIII.

Whether or not the record shows that Senator Walthall caused to be drafted the amendment set out in finding 18, providing for the identification of the Mississippi Choctaws and which was put into the act of June 28, 1898, in an amended form.

Immaterial. Facts in reference thereto fully covered by the court's finding XVII. The question as to whether Senator Walthall did or did not draft the said amendment is not of importance to the issues in this case. What a Senator of the United States did in his official capacity throws no light upon the claimant's right to compensation for professional services, although the subject matter of the legislation may affect his clients. It would not even afford
435 assistance to the claimants if he did so at their personal request. The parties to this suit are the claimants and the Mississippi Choctaw Indians.

XIX.

Whether or not after the sending out to the Mississippi Choctaws of the circular letter dated July 1, 1898, set out in finding 19, pp. 9 and 10, of the court's findings, Charles F. Winton and associates or employees went personally into the various counties where the Mississippi Choctaws lived in Mississippi and sent runners or messengers throughout the country districts urging the Mississippi Choctaws to appear before the Dawes Commission for identification?

The record furnishes proof, competent testimony, that Charles F. Winton hindered, delayed, and annoyed the commission in its work in Mississippi. This appears positively from the testimony of Commissioner McKennon, who in fact publicly rebuked Mr. Winton for his conduct. It is corroborated by the reports of the commission, and is clearly shown to have been active and continuous. It is nowhere contradicted by any competent evidence in the record. That his conduct at this time was contrary to the understanding and instructions of Mr. Robert L. Owen appears, but Mr. Owen was not with Mr. Winton in Mississippi, and Mr. McKennon was. The record is indisputable as the correctness of the court's finding upon this subject. It is nowhere contradicted at any place in the record except by a voluntary statement in an ex parte affidavit made by Mr. Winton, which is obviously incompetent.

XX.

A. Whether or not the full-blood rule of evidence was adopted by A. S. McKennon in the report of March 10, 1899, as the result, wholly or in part, of the argument and efforts made by Robert L. Owen.

If the request is material the fact is not susceptible of proof. The report of Commissioner McKennon is set forth in the findings. The inquiry seeks to elicit a conclusion. As before observed, we can not find from the proof in the record—as a fact—that certain public officials did this thing or that as a result of someone's argument. It is possible that they may have had convictions of their own. We set forth what they did, and if they give reasons therefor, find the same.

Whether or not the said McKennon immediately afterward became a member of the firm of Mansfield, McMurray & Cornish, who thereafter fought the full-blood rule of evidence and attempted to have it repealed by the Choctaw-Chickasaw agreement as submitted February 23, 1901, and March 24, 1902?

The request is plainly argumentative and suggestive. We find nothing in the record impugning the sincerity of Commissioner McKennon in the discharge of his public duties.

436 B. Whether or not it is a fact that no witness testified in support of the fact stated in the second paragraph of finding 20, page 12, of the court's findings, and that Winton at the time mentioned in said findings stated to Commissioner McKennon that he was not interfering with but assisting in causing the Indians to come before the commission for identification, and that at least four

witnesses testified that Winton and employees at that time were trying to get the Indians to come before the commission for identification?

The request as framed is clearly argumentative. It is fully answered in the court's findings. It is likewise subject to criticism as a repetition of the same request in finding XIX. It is not a request for a finding of fact. It is impertinent and irrelevant.

C. Whether or not the Alphabetical Index of the names of 16,000 Choctaw Indians prepared and printed by Mr. Owen, with page references to evidence showing their pedigree, stated in finding 20 of the court's findings at bottom of page 12, as furnished to Commissioner McKennon by R. L. Owen was of great value and assistance to the Dawes Commission in identifying the Mississippi Choctaws?

Fact has been found and appears in the last paragraph of the court's finding XX, p. 12.

XXIII.

A. Whether or not the amendment proposed by Senator James K. Jones in April, 1900, to the Indian appropriation act relative to the Mississippi Choctaws was in the identical words of the petition Winton and his associates addressed to the Congress and printed as a Senate document;

Whether or not he explained to the Senate that this amendment was offered at the instance of the representatives of the Mississippi Choctaws.

B. Whether or not Robert L. Owen and associates prepared and caused to be presented to Congress and contended for the passage and enactment of the provision in the Indian appropriation act of May 31, 1900, set out in the second paragraph of finding 23, on page 13 of the court's finding?

A. This is not a request for a finding of fact. The memorial referred to is set out in the court's findings, and the legislation adopted follows in the next findings. There can be no difficulty by a comparison of the two in reaching a conclusion.

The record is silent as to the second request. The Congressional Record on the subject does not mention the alleged representatives of the Mississippi Choctaws. Fact, if found, is immaterial.

B. This request calls for no finding as to appearances before committees of Congress. The authorship of the legislation has been the subject of acute controversy, as appears by the record. The authorship of the second proviso is conceded. The record sustains the court's finding and does not sustain the making of such a positive statement of fact as the inquiry seeks to elicit. The court's finding is the ultimate fact arrived at by an analysis of the testimony introduced, testimony decidedly conflicting.

437

XXIV.

A. Whether or not the Dawes Commission and the Interior Department were from 1896 to March 10, 1899, when they yielded and

adopted *to* full-blood rule of evidence, opposed to the enrollment of the Mississippi Choctaws as Choctaw citizens;

Whether or not the Dawes Commission did not later reverse itself, about the time McKennon, in June, 1900, left the commission and became a member of the firm of Mansfield, McMurray & Cornish, employed by the Choctaw Nation to cause the commission to nullify the act of May 31, 1900, which that commission did by a harsh, technical, and restricted construction of said act;

Whether or not in the report of the Dawes Commission of May 19, 1902, the reasons of the Dawes Commission for such opposition were fully set up and were sustained by the Secretary of the Interior in his letter of June 3, 1902, thereby destroying and reversing the directions given by him to the Dawes Commission to follow the full-blood rule of evidence in his letters of August 26, 1899, and October 19, 1900, as stated in the last paragraph of the court's finding 24?

B. Whether or not the Dawes Commission followed the full-blood rule of evidence in accordance with the directions of the Secretary of the Interior in his letters of August 26, 1899, and October 10, 1900, and referred to in the court's findings 24?

Whether or not the Secretary of the Interior for a time acquiesced and, in fact, approved the action of the Dawes Commission in not following said directions?

The above requests are manifestly argumentative and involve the statement of a conclusion. The court has found from the record exactly what the Dawes Commission did in considering this matter and followed it with the official action of the Secretary of the Interior. In the court's opinion the attitude of the commission is fully discussed. The findings of fact must avoid conclusions. Taking the above requests as a whole, the proper place for the insistence is in the briefs of counsel. The court's findings afford ample means from which proper deductions as to the attitude of the commission can be made. The subject is treated extensively in the same.

XXIX.

A. Whether or not the amendments to the agreement which later became the act of July 1, 1902, providing for and adopting the full-blood rule of evidence, longer time within which to apply for identification and longer time within which to remove to the Choctaw country west, after notification of official identification, were amendments agreed to in the Committee on Indian Affairs of the House of Representatives before which Robert L. Owen made an argument in support of said amendments in behalf of the Mississippi Choctaws while said committee was considering said questions?

In claimants' second amended petition filed in this court appears the following allegation: "The bill of July 1, 1902, known as
438 the Choctaw-Chickasaw agreement, passed over the protest of your petitioners, and in spite of every effort that they could make for its proper amendment." This petition is verified by Wm. H. Robeson, attorney for petitioners, and Robert L. Owen, appearing for himself.

Subsequently on page 299 of the record Robert L. Owen testifies as follows:

"In spite of our protest the Choctaw-Chickasaw agreement was passed through Congress July 1, 1902."

Again at page 2576 of the record the witness states:

"The service I tried to render in opposing the legislation of 1902 was in opposing injurious restrictions on the rights of the Mississippi Choctaws, and in this attempt I failed, and I do not think I rendered much service in this appearance, although I endeavored to do so."

B. Whether or not the act of May 31, 1900, would have given the Mississippi Choctaws all the relief necessary and more than the act of July 1, 1902, if the act of 1900 had been correctly interpreted by the Dawes Commission and as later construed by Assistant Attorney General Van Devanter, as stated in his opinion of December 2, 1901, and approved by the Secretary of the Interior?

This is obviously not a request as to a specific fact. Any response thereto involves a conclusion, not of fact but of law. It is argumentative.

C. Whether or not the Secretary of the Interior in his letter of May 14, 1902, to the United States Senate contemplated such correct interpretation as that given in the said opinion of Assistant Attorney General Van Devanter under date of December 2, 1901?

There is absolutely no evidence in the record from which we can ascertain the "contemplation" of the Secretary of the Interior. This request asks for a conclusion deducible alone from the Secretary's conduct and written communications.

D. Whether or not the memorials prepared and caused to be presented to Congress, to both the Senate and the House of Representatives, by Robert L. Owen, Winton and associates during the period from July, 1896, to 1906, the arguments before the committees of the Senate and of the House; the arguments before the Dawes Commission, the United States courts, the Attorney General, the Interior Department, the officials of the Choctaw Nation, and Members of Congress created a powerful sentiment in favor of granting by legislation the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, causing Congress to pass numerous acts in their interest and the identification of 1,643 Choctaws and their allotment and enrollment on a separate roll known as the Mississippi Choctaw roll?

We need indulge in no further comment with respect to this request than to say it is not a request for a response as to whether there is proper evidence to prove a material fact. It asks for a conclusion—

a conclusion which is one of the crucial issues in the case. The
439 request is argumentative. This court is unable (and it is no part of the issues in this cause) to find whether or not what the claimants said or did produced a "powerful sentiment" for the passage of legislation advocated by them.

E. Whether or not from 1896 when Robert L. Owen and Charles F. Winton first became representatives of the Mississippi Choctaws in

the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, to 1906, they, as attorneys for said Mississippi Choctaws, persistently and continuously prosecuted the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation and made arguments both oral and written in support thereof to Congress, committees of Congress, Members of Congress, the Secretary of the Interior, the Bureau of Indian Affairs, the Dawes Commission, and the officers and representatives of the Choctaw Nation?

There is no evidence in the record establishing the fact that Robert L. Owen and Charles F. Winton ever became the representatives of the Mississippi Choctaws as a body. That is one of the most important issues in the case. The remainder of the request is fully answered in the court's findings.

Whether or not during said period Robert L. Owen was recognized by the committees of Congress, Members of Congress, and other officials of the Government and of the Choctaw Nation, as the attorney for the Mississippi Choctaws in their effort to obtain their rights to citizenship in the Choctaw Nation, then made before Congress and its committees?

The fact if shown is immaterial. The issue is not what the committees of Congress, etc., recognized as the true representative capacity in which claimants appeared. The court is trying a lawsuit committed to it by special acts of jurisdiction, and proof must be adduced showing the true relationship between the claimants and the Indians. This obviously can not be done by attempting to show that certain people recognized the claimants as appearing in a certain capacity, and any evidence tending toward that end is incompetent and immaterial. The parties mentioned were not charged with an investigation of this particular fact.

F. Whether or not Robert L. Owen, as the recognized attorney for the Mississippi Choctaws, from 1896 to July 1, 1902, contended for and supported by argument, written and oral, the adoption by Congress of the full-blood rule of evidence in behalf of the Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw Nation, then being considered by Congress and the committees of Congress?

Whether or not any of the 1,643 Mississippi Choctaws enrolled as such would have been or could have been enrolled and admitted to citizenship in the Choctaw Nation under the law existing at the time of enrollment without the adoption and use of the said full-blood rule of evidence?

The request in its first paragraph begins by stating a conclusion. The fact as to the full-blood rule of evidence is fully covered in the court's findings.

440 The second paragraph is argumentative and asks the court to find as a fact what is apparently a conclusion, involving in the findings a construction of a statute.

G. Whether or not Robert L. Owen, as the recognized attorney for the Mississippi Choctaws, while the Choctaw-Chickasaw agreement was pending in Congress and before its committees the first six months of 1902 contended for and supported by arguments, written

and oral, an amendment to said agreement granting to the Mississippi Choctaws a longer period of time after identification as Choctaws within which to remove to the Choctaw country west than that originally provided for therein?

Heretofore fully answered in the court's findings.

H. Whether or not Robert L. Owen, as the recognized attorney for the Mississippi Choctaws, while the Choctaw-Chickasaw agreement was pending in Congress and before its committees during the first six months of 1902 contended for and supported an amendment to said agreement granting to said Choctaws a longer period of time within which to apply for identification as a Choctaw citizen than that originally provided for therein?

The facts embodied in the request are fully answered in the court's findings both as to the material fact and the capacity in which the claimants appeared.

I. Whether or not the full-blood rule of evidence provided for in the amendment drafted by Mr. McMurray, attorney for the Choctaw Nation and Assistant Attorney General Van Devanter, which later became a part of the act of July 1, 1902, was drafted by said parties in the way of a compromise settlement of and to end the long and somewhat furious contest made by Robert L. Owen and associates for a larger and fuller recognition of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation?

Whether or not the adoption by said amendment of the full-blood rule of evidence as a compromise substantially granted the amendment contended for by Robert L. Owen, as attorney for the Mississippi Choctaws and as prayed for in the memorial prepared by Robert L. Owen and associates, and which they caused to be presented to the House and Senate April 24, 1902, wherein it was prayed that the full-blood rule of evidence be adopted and the full bloods be admitted and given time for identification as full bloods and citizens of the Choctaw Nation, and time within which to remove to the Choctaw country West?

The request repeats an inquiry as to facts heretofore requested, is argumentative, and asks for a conclusion. The material facts as to the legislation of 1902 are to be found in the court's findings.

J. Whether or not Mr. McMurray and Mr. Van Devanter, who drafted the amendment recognizing the full-blood rule of evidence, did so at the instance of Hon. J. S. Sherman, chairman of the
441 Committee on Indian Affairs of the House of Representatives, before whom Robert L. Owen had argued in favor of the full-blood rule of evidence?

K. Whether or not this direction of Hon. J. S. Sherman to Mr. McMurray to prepare such an amendment was in effect instructions to prepare it for use as a committee amendment?

Whether or not this draft by Mr. McMurray was presented on the floor of the House by Mr. Curtis, a leading member of the Indian Committee, and the member in charge of the Choctaw-Chickasaw agreement then pending on the floor?

J. The facts asked for in this request are fully covered in the

court's findings. It is quite immaterial as to who requested Mr. McMurray or Mr. Van Devanter to draft this legislation; even if the claimants had done so it would be a gratuitous service.

K. Argumentative and asks for a conclusion and not a fact.

The second paragraph is answered in the court's findings.

L. Whether or not claimants' motion for a new trial filed July 25, 1916, and, without hearing or argument thereon, overruled December 11, 1916, alleged newly discovered evidence supported by a letter written by Tams Bixby on September 23, 1915, which letter is published as a part of a congressional document, the material or relevant portion of said letter being set out in subsections M and N hereof?

Whether or not the Tams Bixby who wrote said letter of September 23, 1915, was the same Tams Bixby who was a member of the Dawes Commission from 1896 to 1906, and part of that period chairman of said commission?

M. Whether or not the following statement—

"Those representing Mississippi Choctaws strenuously contended that the full-blood rule of evidence should be adopted and that the schedule of March 10, 1899, should be recognized as binding. This schedule was erroneous in many particulars, as the Dawes Commission discovered upon a critical examination of it; but finally, in order to adjust this controversy, a compromise was reached when the Choctaw-Chickasaw agreement of 1902 was passed on in Congress, so that an amendment providing for the full-blood rule of evidence was adopted, so drawn, however, as to recognize only those who were living full bloods and not recognizing their half-breed children. It was thought better by the Government authorities to yield this point as a settlement of the controversy, as the friends of the Mississippi Choctaws were demanding very much larger concessions"—

made by Mr. Tams Bixby in his letter of September 23, 1915, is true as shown by the record in this case?

The contents of this finding, its materiality, and the court's action thereon are fully discussed in the first part of the court's opinion herein.

N. Whether or not it affirmatively appears and is uncontradicted by the evidence that Robert L. Owen, as the recognized attorney for the Mississippi Choctaws, acquiesced in and favored the act of July 1, 1902, as a compromise measure after it had been amended so as to protect the Mississippi Choctaws by the adoption of the
442 full-blood rule of evidence and other amendments granting relief to the Mississippi Choctaws?

The request is argumentative, seeks a conclusion, is a repetition, and in so far as at all material has been heretofore commented upon.

O. Whether or not the following statement made by said Tams Bixby in his said letter of September 23, 1915—

"On the 31st day of May, 1900, Congress passed an act that Mississippi Choctaws 'duly identified' by the Dawes Commission might remove to the Choctaw country West at any time before the rolls closed.

"Many applications were made under this act for identification.

The Dawes Commission decided that any person to be 'duly identified' must prove that his ancestors had complied with the conditions of the fourteenth article of the treaty of 1830, and that he was a lineal descendant of such ancestor. After examining nearly every case which had been enrolled under the schedule of March 10, 1899, the commission decided that only a very few individuals would be entitled to enrollment as 'duly identified.' Neither the Dawes Commission nor the Interior Department felt that it had a right by loose interpretation to permit the Mississippi Chocaws to absorb millions of dollars of property vested by law in the Choctaw Nation West unless it were done upon the direct and express authority of Congress. It did not seem right that those who had lived in Mississippi for generation after generation, and who had taken no part in developing the Choctaw country West, should have the right to joint ownership of this property unless they could prove themselves entitled by competent evidence, and this they could not do. For that reason the Dawes Commission and the Interior Department were opposed to their enrollment and in the report of the Dawes Commission of May 19, 1912, the reasons of the Dawes Commission were fully set up and were sustained by the Secretary of the Interior in his letter of June 2, 1902.

"The Choctaws and Chickasaws West naturally felt that they were not called upon to divide this estate with persons who had not lived with them for over 70 years and they were opposed to admitting Mississippi Choctaws who could not support their claim by adequate and competent evidence, and for this reason, the agreement was presented to Congress February 23, 1901, and also March 24, 1902, providing that only Mississippi Choctaws 'duly identified' should be admitted."

is true and is fully supported by the evidence in this case.

The request is a repetition and is argumentative. The Bixby letter is not in the record, and the subject matter of the same has been fully answered in a former portion of this opinion.

P. Whether or not the amendments of sections 41 and 42 of the agreement which later became the act of July 1, 1902, set out in finding 29, were caused to be enacted as a result of the long contest from 1896 to July 1, 1902, inclusive, waged by Robert L. Owen and Charles F. Winton and associates in behalf of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation as provided for in said amendment?

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Q. Whether or not all of the oral evidence in the present case is to the effect that Robert L. Owen, Winton, and associates contended for and were in favor of and labored from 1896 to July 1, 1902, especially during the first six months of the year 1902, as attorneys for the Mississippi Choctaws, for the passage of remedial legislation for the relief of the Mississippi Choctaws similar to and the same as the provisions of the act of July 1, 1902, as finally enacted, and that not one witness testifies that Robert L. Owen nor any of the associates of Winton opposed or protested against the said provisions of said act contained in the committee amendments mentioned in finding 29, granting relief to the Mississippi Choctaws?

R. Whether or not said Robert L. Owen, as the recognized attorney for the Mississippi Choctaws from July, 1896, to 1906, persistently, forcefully, and successfully represented said Mississippi Choctaws and their interets in the matter of their claims as to citizenship in the Choctaw Nation, then pending before Congress, by causing memorials in their behalf to be presented to the Congress, making arguments before the committees of the Congress and the officials of the Government and the Choctaw Nation?

Whether or not the labor of Robert L. Owen in behalf of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, from July, 1896, to 1906, resulted in any benefit or value whatever to the Mississippi Choctaws?

We have grouped the above requests and will discuss them generally, pursuing this policy because it is evident that their similarity, both as to subject matter and verbiage, indicate that they are simply and solely a repetition of several preceding requests upon the same matter, with the added feature of emphasis and positiveness.

If the court were required to respond to the requests it is patent that it would be expressing in the findings a conclusion already expressed in the opinion of the court. We need not repeat the issue as to who were the representatives of the Mississippi Choctaw Indians as a body, nor need we again go into the legislation of 1902. The facts appertaining to the subject have been found and discussed. It adds nothing to the force of claimant's contention to emphasize and repeat requests for specific response to interrogatories as contained in the requests, nor is it at all conducive to their proper consideration to make them general and argumentative. Findings of fact serve the purpose of setting in view the origin, progress, and conclusion of the subject matter at issue. No light is thrown upon the issue by interspersing among the many findings a number of conclusions or stating arguments in support thereof. There is not embodied in these requests the statement of a single fact which has not been responded to in some form in the findings of the court as
444 they now are, and it would be a useless and prolonged proceeding to continue to repeat the comment and discussion previously made upon this identical subject.

In request identified as "Q" the inquiry is decidedly impertinent, immaterial, and suggestive.

XXXI

A. Whether or not the services rendered by Robert L. Owen, Winton, and associates, from 1898 to 1906, inclusive, in behalf of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation pending in Congress and before its committees during that time has ever been paid for by anyone?

The request as worded is immaterial, the question being whether paid for by the defendants. Payment would be a matter of defense; the fact that payment is not positively found is the equivalent of a negative. The court has made no findings upon issues not involved.

B. Whether or not during the period from 1896 to July 1, 1902,

inclusive, while the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation was pending in Congress and before its committees, those representing the Mississippi Choctaws strenuously contended that the full-blood rule of evidence should be adopted and that the schedule of March 10, 1889, should be recognized as binding, and, finally, during the early part of 1902, in order to adjust this controversy a compromise was reached when the Choctaw-Chickasaw agreement of 1902 was pending before Congress and its committees so that the amendment providing for the full-blood rule of evidence was adopted for the reason that it was thought better by the Government and the Choctaw Nation authorities to yield this point to the Mississippi Choctaws as a settlement of the controversy for the friends of the Mississippi Choctaws were demanding very much larger concessions?

The request is argumentative and asks for a conclusion. The language, in any event, is too general. We are only concerned with the parties claimant in this court. The material facts of the subject matter have already been found.

C. Whether or not during the period from July, 1893, to 1906, Robert L. Owen in representing the Mississippi Choctaws as their recognized attorney labored to protect their rights which resulted in obtaining the recognition and legalizing of their rights to citizenship in the Choctaw Nation, expended approximately $35,000 in cash for which he has not been reimbursed;

Whether or not he has received any compensation for the services rendered or expenses incurred in behalf of the Mississippi Choctaws?

Any response to the first paragraph would be the expression of a conclusion.

445 No competent evidence in the record upon which an answer to the first or second paragraph could be predicated.

D. Whether or not during the period from July, 1896, until the compromise settlement was made by the Choctaw-Chickasaw agreement, act of July 1, 1902, save and except when they adopted the full-blood rule of evidence, March 10, 1889, and abandoned it in 1900, when McKennon entered the employ of the Choctaw Nation West as a member of the firm of Mansfield, McMurray & Cornish, the Choctaw Nation and the Dawes Commission, especially members McKennon and Bixby, were opposed to recognizing the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation and contended that they had no rights and ought not to be enrolled as such citizens and that no attention should be paid to their said claims to citizenship in the Choctaw Nation?

This request is a repetition, is argumentative, suggestive, and involves a conclusion.

Whether or not during that same period of time, 1893 to July 1, 1902, Robert L. Owen was consistently representing the interests of the Mississippi Choctaws before the committees of Congress, and the Commissioner of Indian Affairs, and the Interior Department, and before the Choctaw Nation authorities, and the Dawes Commission, making arguments in their behalf and contending for the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation?

E. Whether or not the 1,643 Mississippi Choctaws who were admitted to citizenship in and received allotments as members of the Choctaw Nation obtained the right to become such citizens and thereby receive allotments as a result to any extent whatever of any of the labor and work done by Robert L. Owen and associates during the period of several years prior to the passage of the acts under which they were enrolled and allotted; and what compensation is equitable or justly due therefor on the principle of quantum meruit as required by the jurisdictional act in this case?

F. Whether or not, as a result of the remedial legislation enacted by Congress during the years 1896 and 1906, inclusive, 1,643 Mississippi Choctaws have been admitted and enrolled as citizens of the Choctaw Nation and have received as a result thereof property interests worth at least $15,000,000?

G. Whether or not each of the 1,643 Mississippi Choctaws identified and enrolled as citizens of the Choctaw Nation as a result of the remedial legislation enacted by Congress during the years from 1896 to 1906, inclusive, have received an estate or property interests worth at least $9,000?

H. Whether or not a fair, reasonable, equitable, or just compensation on the principle of quantum meruit for the services rendered the Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw Nation from 1896 to 1906, inclusive, is a sum equal in amount to 6 per cent of the total value of the property interests received by said Mississippi Choctaws, or 6 per cent of $15,-
446 000,000.

I. Whether or not Robert L. Owen, generally understood to be and as the recognized attorney for the Mississippi Choctaws by the chairman of the Committee on Indian Affairs of the House of Representatives, "appeared several times each Congress before the Committee on Indian Affairs in behalf of the Mississippi Choctaws," while the matter of their claim to citizenship in the Choctaw Nation was pending before said committees from 1896 to 1906;

Whether or not the said services and efforts of Robert L. Owen "to secure their recognition was unceasing, assiduous, constant, faithful, efficient, and of great value to the Mississippi Choctaws," as testified to by Mr. Curtis, Mr. Jones, Mr. Money, Mr. Sherman, Mr. Little, and Mr. Stephens, all Members of Congress during said period?

We have grouped the preceding requests. It is obvious that they are not requests for specific findings; they are the contentions of the claimants in the case at bar. The court has found fully as to the facts; these requests go to the correctness of the findings, not the omission of material facts. They seek conclusions and are properly a part of the claimant's brief. On their face they exhibit the fact that the designed purpose is to challenge the verdict of the court as to the facts found from the record. They contain many repetitions and in no particular come within the rules. There is no competent proof in the record as to the actual value of the Indian allotments. If there had been, the court would have so found. A response to the above findings would be misleading and of no assistance to a reviewing court, for they are general and comprehensive; they offer no de-

tails from which conclusions could be reached, but in their very language assume the establishment of certain facts not proven to the satisfaction of the court.

XXXII.

A. Whether or not the intervenor, Ralston, Siddons, and Richardson, on the 4th day of March, 1911, and the claimants on the 20th day of February, 1915, filed a motion for permission to amend the petition herein by making the United States a party defendant to this case; and, if so, what action was taken on said motions, respectively, and when was action taken on each of said motions?

A motion of this character was made and overruled by the court. See page 86 of the Chief Justice's concurring opinion, wherein it is said:

"the court are agreed that the United States can not be made defendants in this proceeding."

Through some inadvertence the entry was not made in the docket. The court has ordered the proper docket entries to be made lest some injustice might be done.

The facts covered by this request would in no event be entitled to appear in the findings of the court. They are a part of the docket entries with reference to the proceedings in this case and go into the transcript of the record which is certified to the Supreme Court on appeal.

447 All this could have easily been called to the attention of the court on a single motion, and should have been done long before this.

B. Whether or not the act of May 31, 1900, limited the time within which the Mississippi Choctaws could remove to the Choctaw country West to six months after identification as did the act of July 1, 1902?

C. Whether or not the act of May 31, 1900, required the Mississippi Choctaws to submit proof of their removal within twelve months after the date of identification as did the act of July 1, 1902?

D. Whether or not the act of May 31, 1900, required the Mississippi Choctaws to continuously reside for three years upon the land of the Choctaw-Chickasaw Nation before allotment as did the act of July 1, 1902?

E. Whether or not the act of May 31, 1900, required a Mississippi Choctaw to make proof of continuous residence for three years on the Choctaw land within four years after enrollment as did the act of July 1, 1902?

F. Whether or not the act of May 31, 1900, limited the time within which the Mississippi Choctaws could apply for identification and enrollment as a citizen of the Choctaw Nation as did the act of July 1, 1902?

All the above requests call for the construction and interpretation of acts of Congress, matters of judicial opinion.

The court having examined in detail the said motion for the purpose of ascertaining if any material finding of fact has been omitted

from its findings, and for the further purpose of discovering the extent to which it ought to go in exercising its discretion under the rules, believes the motion for leave to file said motion embodying the requests above noted should be denied. We are unable to conclude, as appears by the foregoing opinion, that the claimants, by the aforesaid motion, have brought to our attention any error of a substantive character which in anywise disturbs the court's conclusions as to the correctness of the findings heretofore announced.

The motion for leave to file said motions will be overruled. It is so ordered.

Campbell, Chief Justice; Barney, Judge; Downey, Judge; and Hay, Judge, concur.

448 XIII. *Application of the Estate of Charles F. Winton, Deceased, and Others, for, and Allowance of, Appeal.*

No. 29821.

The ESTATE OF CHARLES F. WINTON, Deceased, and Others,

vs.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

From the judgment rendered in the above-entitled cause on the 29th day of May, 1916; December 11, 1916, and January 29, 1917, in favor of defendants, the claimants, by their attorney, on the 6th day of February, 1917, make application for, and give notice of, an appeal to the Supreme Court of the United States.

WILLIAM W. SCOTT,
For Claimants.

Filed February 6, 1917.

Ordered that the above appeal be allowed as prayed for.
February 6, 1917.

BY THE COURT.

449 Court of Claims.

No. 29821.

The ESTATE OF CHARLES F. WINTON, Deceased, and Others,

vs.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

I, Samuel A. Putman, Chief Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law; of the opinion of the court and of the concurring opinion; of the

judgment of the Court; of the applications of the claimants and the intervenors for, and the allowance of appeals to the Supreme Court of the United States, and history of proceedings had in said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court of Claims at Washington City, this 7th day of February, A. D. 1917.

SAMUEL A. PUTMAN,
Chief Clerk Court of Claims.

[Seal of the Court of Claims.]

450 To the Clerk of the Supreme Court, Washington, D. C.

SIR: The parts of the record designated by the appellants in the case of Wirt K. Winton, administrator, et als, and six other appeals, Nos. 924, to 930, inclusive, October Term, 1916, to be printed for and used as the trial record are as follows:

The petition and amended petitions of all appellants, omit the petitions and all accompanying exhibits of the intervenors who did not appeal.

All of the court's Findings of Fact pertaining to the appellants, that is, all Findings of Fact except Findings 38, 39, 41, and 45, that is, do not print Findings 38, 39, 41 and 45.

Print all of the Appendix except that part commencing with contract 2, page 37, and ending with the words "J. E. Arnold" on page 41.

Also do not print that part of the Appendix designated as the Gillette contract commencing on page 46 and extending to the bottom of page 48.

And do not print the Gallaspy and Boyd agreements set out on pages 53, 54 and 55.

We herewith hand you a statement of the points on which the respective appellants intend to rely.

WILLIAM W. SCOTT,
Attorney for Appellants in Case No. 924.

W.W.S./M.
1 Encl.

GUION MILLER,
Attorney for Appellants, Cases Nos. 925 to 930, Inclusive.

I hereby acknowledge receipt of a copy of the above letter and its enclosures, this 23rd day of February, 1917.

JNO. W. DAVIS,
Sol. Gen'l.

451 The appellants, Winton and others, in No. 924, intend to rely upon the following points:

1. That the appellants, Winton et al, in case No. 924, had contracts, in a large number,—over two thousand, of Choctaw Indians living in Mississippi, many of whom were later designated by Act of

Congress, as "Mississippi Choctaws", that the Choctaws living in Mississippi could only act individually; that in order to represent the rights of these individuals, it was necessary to represent their rights as a class or group of people, and that Winton and others were authorized and warranted in representing the class or group of Choctaws living in Mississippi and lawfully represented all of those who were admitted by Congress as "Mississippi Choctaws"; that the appellants aforesaid were authorized and warranted in professionally representing the defendants "in the matter of their claim to citizenship in the Choctaw Nation" before the United States Commission to the Five Civilized Tribes, before the United States District Court in Indian Territory, Judge W. H. H. Clayton sitting, before the Supreme Court of the United States, before the Commissioner of Indian Affairs, before the Secretary of the Interior, before the Assistant Attorney General for the Interior Department, before the Attorney General of the United States, before the Senate and House of Representatives of the Congress of the United States, their proper committees, the Committee on Indian Affairs of the House and Senate, and before the members of the Senate and of the Congress concerned in such subject-matter, and before the authorities of the Choctaw Nation, and were fully authorized and warranted professionally in preparing and submitting memorials in behalf of the Mississippi Choctaws, to be presented to the Senate and House of Representatives of the United States in behalf of the Choctaws living in Mississippi, from 1896 to 1906 inclusive; that they did professionally appear and rendered services unavoidably necessary to the recognition of the claim of the Choctaws residing in Mississippi to citizenship in the Choctaw Nation and that for so doing the defendants are entitled to compensation as provided in the jurisdictional acts (34 Stats., 140; 35 Stats. 457, as set out in findings 1 and 2).

2. That the appellants, or some of them, during the period aforesaid, appeared and made professional arguments and filed proper briefs before The United States Commission to the Five Civilized Tribes, the United States District Court, the Supreme Court of the United States, and appeared several times each Congress before the Committee on Indian Affairs of the Senate and House of Representatives, and presented professionally, and as attorneys at law, strictly within the ethics of the profession, the claim of the Choctaws living in Mississippi, to citizenship in the Choctaw Nation, and also appeared before the Commissioner of Indian Affairs and the Secretary of the Interior, the Attorney General of the United States, in the same behalf on numerous occasions when it seemed to be
452 necessary; that the defendants are entitled to compensation for such services under the said jurisdictional acts.

3. That said appellants were always recognized without any question at any time by the officials of the Choctaw Nation, by the United States Commission to the Five Civilized Tribes, by the Commissioner of Indian Affairs, by the Secretary of the Interior, by the Attorney General of the United States, by the Indian Committee of the House and of the Senate, by the United States District Court and by the Supreme Court of the United States, and were permitted

to appear and make arguments before them in behalf of the claim of the Choctaws living in Mississippi to citizenship in the Choctaw Nation west, and prepared arguments, memorials, resolutions, bills, and committee reports in behalf of the claim of the Choctaws living in Mississippi to citizenship in the Choctaw Nation, and are entitled to compensation for professional services rendered under the jurisdictional acts aforesaid.

4. That the professional services rendered as stated in points numbers 1, 2, and 3, were of great value to the Choctaws living in Mississippi, in the matter of their claim to citizenship in the Choctaw Nation; that they were services which were absolutely necessary; that they were services the Choctaws of Mississippi could not render themselves; that the services were strictly professional services, rendered before the executive department, rendered before the judicial departments of the government, and finally rendered before the legislative department of the government, because of the denial of relief by the executive department and by the judicial department; that such services were rendered strictly in accordance with the ethics of the legal profession; that the Choctaws living in Mississippi well knew that such services were being rendered in their behalf and they received the benefits of such services at the hands of these appellants, without at any time indicating that these professional services were being rendered gratuitously, and that these appellants are, under the said jurisdictional acts, entitled to recover from the defendants the full value of such services rendered and expenses incurred in behalf of the Choctaws of Mississippi who recovered the estate.

5. That the services referred to in points 1, 2, and 3, were professional services rendered by the appellants with the full knowledge of the authorities of the Choctaw Nation, of the Government of the United States, and of the Committees of Congress, and were rendered with the full belief on the part of said appellants of their authority to perform such service, their right to appear having never been challenged at any time by the Choctaws living in Mississippi, by the officials of the Choctaw Nation, or the officials of the United States, and that as a matter of good faith they are entitled to compensation for services rendered and expenses incurred in that behalf.

433 6. That irrespective of whether there were any direct binding contractual relations between the Choctaws living in Mississippi as individuals or otherwise, and these appellants, shown by the evidence, the appellants are nevertheless under the said jurisdictional acts entitled to recover for the value of the services actually rendered by them, because they did appear during a period of ten years without question, either by the Choctaws living in Mississippi or by the authorities of the Choctaw Nation or the United States Government, and under the belief that they were authorized to appear, and did render service of the first magnitude.

7. That when the court below held facts urged by the appellants as important and material, to be immaterial, as in the opinion of January 29, 1917, the court below should have fully set out in the

findings of fact the services rendered by these appellants in the matter of the claim of the Choctaws living in Mississippi to citizenship in the Choctaw Nation.

8. That under said jurisdictional acts the services rendered by the appellants in presenting the matter of the claims of the Choctaws residing in Mississippi to Citizenship in the Choctaw Nation to individual members of Congress, individual members of the Committee on Indian Affairs of the Senate and of the House of Representatives, and the officials of the Indian Bureau, Interior Department, the Choctaw Nation and the Attorney General of the United States, the Dawes Commission, entitle these appellants to recover the value of the services rendered and the expenses incurred, whether said services were rendered or expenses incurred in accordance with the request of said officials or any of them, or not.

9. That under the said jurisdictional acts these appellants have the right to recover in this suit for services rendered and expenses incurred in the interest and for the benefit of the Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw Nation, and are entitled to be paid therefor by the Mississippi Choctaws, collectively, distributively, and individually.

WILLIAM W. SCOTT,
Attorney for the Appellants in Case No. 924.

454 927.

Walter S. Field and Madison M. Lindly.

The points on which these appellants rely are:

1. That they were associates of Chester Howe, within the meaning of the Act of References of May 29, 1908.

2. That as set forth in their respective petitions and as established by the evidence, they were under contract with the Bands of the Mississippi Choctaws and with certain individual Mississippi Choctaws to prosecute their claims to citzenship in the Choctaw Nation.

3. That their right thus to appear for and on behalf of the Mississippi Choctaws was recognized by the Commissioner of Indian Affairs, the Secretary of the Interior, the Committees of Congress, the Dawes Commission, and the Federal and Territorial Courts.

4. That they did in fact appear for and represent said Mississippi Choctaws, and render valuable services in the matter of their claim to citizenship in Choctaw Nation, before the Dawes Commission, and the Courts in Indian Territory, and before the Commissioner of Indian Affairs and the Secretary of the Interior, and before the Committees of Congress, and also rendered services by presenting the merits of the claim to individual Senators and Representatives.

5. That these services were legal services and were rendered with the knowledge of the Commissioner of Indian Affairs and to a considerable extent with his co-operation, and were rendered in the full belief on the part of these appellants that they were lawfully authorized to represent the said Mississippi Choctaws.

6. That, irrespective of whether any direct binding contractual relation between these appellants and the Mississippi Choctaws is shown by the testimony, under the Acts of Reference, they would be entitled to recover in this action for the value of the services actually rendered by them.

7. That Findings of Fact should have been made by the Court of Claims setting forth fully the services actually rendered by these appellants and the value of the same as established by the testimony, and the circumstances under which such services were rendered and particularly the facts bearing on the Band contract, and the action of the Commissioner of Indian Affairs in connection with said contract, and his relations with the appellants, Field and Howe, in connection with the presentation of the claim of said Mississippi

455 Choctaws.,

8. That these appellants under the Acts of Reference have the right to recover in this suit for services rendered individual Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw Nation.

9. That services rendered in endeavoring to convince individual Senators and Representatives in Congress, are services for which recovery may be had under the Acts of Reference in this case.

GUION MILLER,
Att'y for Appellants.

456 925, 928, & 930.

James S. Bounds, Attorney in Fact for T. A. Bounds, William N. Vernon, and J. J. Beckham.

The points relied upon by these appellants are:

1. That money advanced by them and services rendered by them in removing individual Mississippi Choctaws from Mississippi to Indian Territory, and in maintaining said Indians en route and while awaiting allotments and in securing for said Indians, valuable allotments, should all be taken into consideration in determining their right to recover and the amount of recovery to which they are respectively entitled in this action.

2. That Findings of Fact should have been made by the Court of Claims fully setting forth the facts as to the amount of money so expended, and the amount of services thus rendered, and the value of the same, as established by the evidence.

GUION MILLER,
Att'y for Appellants.

457 926.

John London.

The points on which this appellant relies are:

The points on which this appelant relies are:

1. That with Madison M. Lindly and Walter S. Field, he was the associate of Chester Howe.

2. That, as set forth in his petition and as established by the evidence, he rendered services to the Mississippi Choctaws as a class and to individual Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw Nation for which he is entitled to recover under the jurisdictional acts herein.

3. That Findings of Fact should have been made by the Court fully setting forth the services thus rendered by the appellant, as shown by the evidence, and the value of the same, and that he was an associate of Howe within the meaning of the jurisdictional acts.

GUION MILLER,
Att'y for Appellants.

458

929.

Katie A. Howe, Executrix, for Chester Howe.

The appellant Howe, in addition to the points relied upon by appellants Field and Lindly as above set forth, relies upon the following additional points:

1. That money expended for and services rendered to individual Mississippi Choctaws in removing them from Mississippi to Indian Territory and establishing their rights on arrival there, including money expended for maintenance and location upon allotments are within the meaning of the Acts of Reference, and should be taken into consideration in determining right to recovery and the amount thereof in this action.

2. That Findings of Fact should have been made by the Court of Claims fully setting forth the facts as to the amount of money so expended, and the amount of services thus rendered, and the value of the same as established by the evidence.

GUION MILLER,
Att'y for Appellant.

459 [Endorsed.] U. S. Supreme Court. Dec. Term, 1916. Winton et als., vs. The Mississippi Choctaws. Appeals Nos. 924-930, inclus. Statement of points on which appellants intend to rely and statement designating the parts of record necessary for the consideration thereof. William W. Scott, attorney for appellants in No. 924. Guion Miller, attorney for appellants in Nos. 925-930, both inclusive.

460 [Endorsed:] File Nos. 25,754, etc. Supreme Court U. S., October term, 1916. Term Nos. 924, etc. Wirt K. Winton, Admr., etc., appellant, vs. Jack Amos et al. J. S. Rounds, Admr., etc., app't, vs. Jack Amos et al., etc. John London, appellant, vs. Jack Amos et al. etc. Walker S. Filed et al., appl'ts, vs. Jack Amos et al., etc. J. J. Beckham, appellant, vs. Jack Amos et al., etc. Wm. N. Vernon, appellant, vs. Jack Amos et al., etc. Katie A. Howe, Execx., appl't, vs. Jack Amos et al. etc. Specification by appellants of points to be relied upon and designation of parts of record to be printed, with proof of service of same. Filed February 23, 1917.

461 Office of the Clerk Supreme Court U. S. Received Mar. 3, 1917.

W. J. H.
H. T.

H. T. L. E. K.

DEPARTMENT OF JUSTICE,
WASHINGTON, March 1, 1917.

To the Clerk of the Supreme Court, Washington D. C.

SIR: In addition to the parts of the record designated by appellants to be printed in the case of Wirt K. Winton, admr. et al., Nos. 924 to 930, inclusive, October term, 1916, the appellees designate as part of the record to be printed for use at the trial of the case the following:

Findings of fact of the Court of Claims, Nos. 38, 39, 41 and 45, and the conclusions of law and opinion of the court.

Also the following parts of the appendix to the findings of fact of the Court of Claims:

Commencing with Contract No. 2, page 37, and ending with the name "J. E. Arnold" on page 41; the Gillett contract commencing on page 46 and ending at the bottom of page 48, and the Gallaspy and Boyd agreements, pages 53, 54 and 55.

Attached hereto is a memorandum of some of the grounds
462 relied upon by the appellees in their designation of the parts of the record to be printed.

Respectfully,

JNO. W. DAVIS,
F. *Solicitor General.*

463 Clerk of the Supreme Court.

Nos. 924 to 930, Incl., October Term, 1916.

Memorandum.

1. Paragraph 2, rule 1, relating to appeals from the Court of Claims, directs that the findings of fact and conclusion of law of the Court of Claims are to be certified to the court as a part of the record upon which the case shall be heard.

2. The conclusion of law dismissing each of the several petitions and intervening petitions (p. 34) is based upon all of the findings of fact made by the Court of Claims, and if any of said findings should be omitted from the transcript of the record, it would necessitate a corresponding change in the conclusion of law and judgment of the Court of Claims dismissing the said petitions.

3. The appellees are entitled to have before the court in the record transmited by the Court of Claims the findings of fact and conclusion of law, the appendix to said findings of fact, and the opinion of the lower court, in order that the court may see at once everything that was done by the Court of Claims and the facts upon which its actions were predicated, and it follows that if Findings 38, 39, 41 and 45 are omitted from the printed record, there would be no facts to support

the judgment of the Court of Claims in dismissing the petitions of the intervening claimants who did not appeal from said
464 judgment, and would leave in more or less obscurity the discussion of their claims in the opinion of that court (pp. 80, 81).

4. Findings of fact numbered 38, 39, and 41, which the appellants desire to have excluded from the printed record, have a direct bearing upon the claims of Winton and the intervening claims of Howe, Field, Lindley and London.

5. Winton and Owen took contracts in 1893 with approximately 1000 Mississippi Choctaws by which they agreed to secure their rights to citizenship in the Choctaw Nation and to participation in the allotment of tribal lands, and the distribution of tribal funds, in consideration of a fee of one-half of the net interest of each allottee in any allotment secured. Winton and Owen, having reached the conclusion that these contracts were not enforceable in the courts by reason of the provisions of the acts of June 28, 1898, and May 31, 1900, which prohibited the encumbrance of such allotments, abandoned them and entered into contracts on a new form beginning June 20, 1901, in a series from 1 to 834, with about 2000 individual Mississippi Choctaws. These contracts were drafted to avoid the provisions of the acts relating to the encumbrance of allotments, and the consideration named was a sum of money equal to one-half the value of the net recovery of land, money, or money values,
465 and the contract further provided for the removal of the Mississippi Choctaws to the Choctaw Nation (Findings 10 and 28.) The removal of the Indians prior to enrollment as citizens of the Choctaw Nation was made a necessary requirement by the legislation of Congress out of which this suit arose.

Of the 1759 Mississippi Choctaws who were enrolled as citizens of the Choctaw Nation, 1578 are defendants in this suit, of whom only 696 individuals had contracts with Winton and Owen. Winton and Owen, although their contracts required them to do so, removed only a few of the Indians, and then abandoned the attempt at removal. They are now claiming compensation for their alleged efforts towards securing legislation by which the rights of the Mississippi Choctaws were recognized by Congress, by suing those Mississippi Choctaws who were removed by the Government and private parties, or who moved themselves. Among the private parties who moved some of the said Indians, or who paid the expenses of their removal, were Joseph W. Gillett, the facts of whose claim are set out in Finding No. 38, and David C. McCalib, the facts in whose claim are set out in Finding No. 41.

6. The appellants Howe, Lindley, Field and London claim their employment by the Mississippi Choctaws through individual contracts taken with said Indians by Hudson and Arnold. Hud-
465½ son sold a large number of such contracts to Joseph W. Gillett and raised a large sum of money as the proceeds of such sale. Howe and Hudson were also intimately connected with the Choctaw-Chickasaw Land and Development Company, the facts of whose claim are set out in Finding No. 39, and the claim of the said

Company is a matter of defense against Howe, Lindley, Field and London, who claimed to be the associates of said Howe.

In addition to the sums paid by the said Gillett to Hudson in connection with the sale of the Mississippi Choctaw contracts see the finding relating to the said Arnold and Hudson, No. 35, page 22, where the court finds that they collected fees from individual Mississippi Choctaws in excess of $30,000.

For the connection between Findings 38 and 39 see Findings 35, 36 and 42.

7. The appellees have a right to show to the court who were dealing with the Mississippi Choctaws, and how they were dealing with them. That certain persons were making contracts with individual Mississippi Choctaws, citizens of the United States and the State of Mississippi, afterwards citizens of the Indian Terrtory and the State of Oklahoma (Finding V). That such persons expected to get their compensation from the individual Indians with whom the contracts were made, and were leasing and otherwise occupying their lands and premises with a view to reimbursing themselves for their
466 expenses in the removal of the Indians. That they could have sued, and some did sue, the individual Indians where they lived (Finding 44), and it was in violation of the Constitution of the United States to sue them anywhere else.

467 [Endorsed:] File Nos. 25,754, etc. Supreme Court U. S. October term, 1916. Term Nos. 924 to 930. Wirt K. Winton, Adm'r, etc., and Others, appellants, vs. Jack Amos, et al., etc. Designation by appellees of additional parts of record to be printed. Filed March 3, 1917.

Endorsed on Cover.

File No. 25,754. Court of Claims. Term No. 924. Wirt K. Winton, Administrator of the Estate of Charles F. Winton, Deceased, et al., appellants, vs. Jack Amos and Others, Known as the Mississippi Choctaws.

File No. 25,755. Term No. 925. J. S. Bounds, Attorney in Fact for T. A. Bounds, appellant, vs. Jack Amos and Others, Known as the Mississippi Choctaws.

File No. 25,756. Term No. 926. John London, appellant, vs. Jack Amos and Others, Known as the Mississippi Choctaws.

File No. 25,757. Term No. 927. Walter S. Field and Madison M. Lindley, appellants, vs. Jack Amos and Others, Known as the Mississippi Choctaws.

File No. 25,758. Term No. 928. J. J. Beckham, appellant, vs. Jack Amos and Others, Known as the Mississippi Choctaws.

File No. 25,759. Term No. 929. William N. Vernon, appellant, vs. Jack Amos and Others, Known as the Mississippi Choctaws.

File No. 25,760. Term No. 930. Katie A. Howe, Executrix of the Estate of Chester Howe, Deceased, appellant, vs. Jack Amos and Others, Known as the Mississippi Choctaws. Filed February 8, 1917. File Nos. 25,754-25,760.

FILE COPY.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1916

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WIRT K. WINTON
Administrator of the
ESTATE OF CHARLES F. WINTON,
Deceased, and Others
vs.
JACK AMOS AND OTHERS KNOWN
AS THE MISSISSIPPI CHOCTAWS
} No. ~~924~~

WILLIAM W. SCOTT,
Attorney for Appellants

IN THE

Supreme Court of the United States

OCTOBER TERM, 1916

WIRT K. WINTON
Administrator of the
ESTATE OF CHARLES F. WINTON,
Deceased, and Others
vs.
JACK AMOS AND OTHERS KNOWN
AS THE MISSISSIPPI CHOCTAWS

No. 924.

MOTION FOR WRIT OF CERTIORARI

Comes now the appellants, Wirt K. Winton, administrator of the estate of Charles F. Winton, deceased, and others, by their counsel, William W. Scott, and suggest diminution of the record in this cause, in this, to wit:

1. That the findings of fact made and entered by the Court of Claims on December 7, 1914, and forming a part of the record of said Court is omitted from the transcript.

2. That the findings of fact made and entered by the Court of Claims on May 17, 1915, and forming a part of the record in said Court is omitted from the transcript.

3. That the motion made by the appellants herein (original claimants in the court below) made on August 9, 1915, to amend the findings of fact made by the Court of Claims on May 17, 1915, and forming a part of the record in said Court is omitted from the transcript.

4. WHEREFORE the said appellants, Wirt K. Winton, administrator of the estate of Charles F. Winton, deceased, and others, move the court under Rule 14 to award a writ of certiorari to be issued and directed to the Chief Justice and Judges of the Court of Claims of the United States, commanding them, that searching the records and proceedings in said cause, they forthwith certify to this court those parts of the record so omitted as aforesaid.

Dated this 20th day of March, A. D. 1917.

WILLIAM W. SCOTT,
Attorney for Appellants.

AFFIDAVIT

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA, } *To wit:*

Personally appeared before the undersigned William W. Scott, who having been first duly sworn on his oath says:

That his name is William W. Scott and that he is the attorney of record for the appellants and was the attorney of record for said appellants, the original claimants, in the court below.

That the said court below made and entered findings of fact on December 7, 1914, and on May 17, 1915, and that on August 9, 1915, the said appellants, claimants in the court below, moved to amend the said findings made on May 17, 1915, in numerous instances, particularly Findings 9, 11, 15, 17, 19, 24, 29, 30, 31 and 33, covering the same questions of fact set out in claimants *"request for findings of fact on certain questions of fact"* made and filed on January 8, 1917, together with claimants motion under Rule 90 for leave to file said "request for findings of fact on certain questions of fact."

Affiant further states that the motion made by the claimants on August 9, 1915, to amend the findings of fact made and entered by the court on May 17, 1915, in many instances requested the court to amend said findings by inserting therein or add thereto certain paragraphs of the findings of fact made on December 7, 1914, to which the attorney for the defendants had made no objections as provided for in the *per curiam* opinion attached to the said findings of fact made and entered by the court on December 7, 1914, and that the claimants said *"request for findings of fact on certain questions of fact"* covered the same subject matter or questions of fact as did also claimants said motion

of August 9, 1915, to amend the findings of fact made May 17, 1915.

Affiant further states that on or about February 6, 1917, after action was taken by the court below on claimants motion for new trial and on claimants said *"request for findings of fact on certain questions of fact"* as shown by the court's opinion entered January 29, 1917, which opinion forms part of the transcript, the appellants, as claimants in the court below, moved the court to direct and authorize the certification as part of the transcript the said findings of fact made May 17, 1915, and claimants motion, or certain parts thereof, to amend said findings and which motion was overruled by the court.

Affiant further states that he believes that the matter and things set forth in the above motion for writ of certiorari should be made a part of the record in this case in order that all the questions involved may be fully and fairly presented to the court.

Further this affiant saith not.

WILLIAM W. SCOTT.

Subscribed and sworn to before the undersigned a Notary Public in and for the District of Columbia this 19th day of March, A. D. 1917.

WADE B. HAMPTON,
Notary Public.

[SEAL]

BRIEF IN SUPPORT OF MOTION FOR WRIT OF CERTIORARI

The appellants desire that the findings of fact made December 7, 1914, and the findings of fact made May 17, 1915, and claimants motion to amend the findings of fact made May 17, 1915, be made a part of the transcript in order to show to your Honorable Court that the questions of fact presented by claimants "request for findings of fact on certain questions of fact" *covered the same questions of fact* covered by claimants said motion to amend the findings of fact and that the court below is in error in stating that said "requests now made have not heretofore been requested in either narrative or alternative form and the reason for this omission does not appear" as said by the court below at the top of page 6 of the opinion filed therein January 29, 1917.

Appellants desire the transcript to set forth the findings of fact made December 7, 1914, in order to show to your Honorable Court that certain parts of said findings (unobjected to by the defendants as required by the opinion of the court attached to said findings of December 7, 1914), were omitted from the findings of fact made May 17, 1915, and that appellants said motion of August 9, 1915, to amend said findings in certain instances presented to the court the same facts as those set out in claimants "request for findings of fact on certain questions of fact" and in many instances were facts which the court had found and set out in the tentative findings of December 7, 1914, and omitted or not set out in the findings of May 17, 1915, or the findings of May 29, 1916.

The court below *had previously refused* the intervenors, Walter S. Field and others, *a bill of exceptions* and the purpose of claimants "request for findings of fact on certain

questions of fact" was to lay the foundation for an application to your Honorable Court for an order on the court below to make findings of fact on the questions of fact therein set out, the course outlined by your Honorable Court in the case of *Driscoll vs. The United States,* 131 U. S. App., CLIX, the court prior to that time not having held that said facts were immaterial and incompetent as that court did later hold in its said opinion of January 29, 1917.

In short the contention of the appellants is that the court below had, prior to January 8, 1917, been requested by the claimants to make findings of fact on the questions of fact set out in claimants "request for findings of fact on certain questions of fact" and this can only be verified by having the transcript contain the said findings of fact and claimants said motion to amend said findings of fact and the verification of appellants contention will prove to your Honorable Court that the court below is in error when it states said requests had not prior thereto been made to the court.

That the court below is in error as above stated will clearly appear by comparing the claimants request with the findings made by the court. For instance, the court referring to Finding 9 and that part of "claimants request for findings of fact on certain questions of fact" pertaining to said finding, says:

> "*Whether or not* the original contract, made June 23, 1896, and modified July 23, 1896, between Charles F. Winton and Robert L. Owen, provided that said Owen was to represent the claims of the Mississippi Choctaws before the proper officers of the United States and Indian Governments, and in which representation the said Winton was to assist and cooperate with the said Owen?"

"Finding IX of the court is exactly the same as it appeared in the tentative findings of December 7, 1914. Counsel for claimant, in his brief filed January 21, 1915, made no objection to the same, and in open court on the oral argument stated "no objections."

The above request is taken by the court from the "claimants request for findings of fact on certain questions of fact" and the paragraph immediately following it is the court's comment thereon and while this within itself is technically correct *the fact nevertheless remains that the claimants did prior to January 8, 1917,* the date of the filing of claimants "request for findings of fact on certain questions of fact" *move to amend* said Finding 9 by *requesting the court to insert the same words as those appearing in said request* in language as follows:

FINDING IX

"Amend Finding IX, paragraph —, line 7, by inserting after the words *"funds'* the following:

"And represent the claims of those people (Mississippi Choctaws) before the proper officers of the United States or Indian Governments and in which representation the said Winton was to assist and co-operate with the said Owen, R. 320-321, Ex. 11."

There are many other instances showing that the court below is in error in stating that "the request now made [referring to the requests made in claimants request for findings of fact on certain questions of fact filed January 8, 1917], have not heretofore been requested in either narrative or alternative form and the reason for this omission does not appear." This is particularly true as to the subject treated in the court's Findings 11, 15, 17, 19, 24, 29, 30, 31 and 33, as will be shown by comparing claimants said motion to amend said findings and said findings with

claimants said request and this can only be done by having claimants said motion and said findings of December 7, 1914, and May 17, 1915, made a part of the transcript for the consideration of your Honorable Court.

It is, therefore, respectfully submitted that the writ of certiorari as requested should issue.

WILLIAM W. SCOTT,
Attorney for Appellants
in Case No. 924.

I hereby acknowledge the receipt of a copy of the above motion, affidavit and brief this 21st day of March, A. D. 1917.

JOHN W. DAVIS,
Solicitor General of the U. S.

I hereby consent to the allowance of the above motion.

GUION MILLER,
Attorney for Appellants in
Nos. 925, 926, 927, 928, 929, 930.